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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV03–931–1 FR]

Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears handled. The Committee locally administers the marketing order, which regulates the handling of fresh Bartlett pears grown in the States of Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 147 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in the States of Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods, from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears grown in the States of Oregon and Washington.

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

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2003, and unanimously recommended 2003–2004 expenditures of $1,122,250 and an assessment rate of $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. In comparison, last year's budgeted expenditures were $77,612. The assessment rate of $0.335 is $0.31 higher than the rate previously in effect. The Committee recommended an increased assessment rate to establish market research and development projects to assist, improve, or promote the marketing, distribution, and consumption of pears. These projects will be executed through an agreement with Pear Bureau Northwest, which also oversees market development and promotion, including paid advertising, projects for the Winter Pear Control Committee, under Marketing Order No. 927 regulating the handling of winter pears grown in Oregon and Washington. The Bartlett pear projects for 2003–2004

include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications through website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities will be conducted.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

	2002–2003	2003–2004	Net change
Oregon Bartlett Pear Commission	$0.34	$.0275	−$0.3125
Washington State Fruit Commission	0.332	0.022	−0.31
Northwest Fresh Bartlett Pear Marketing Committee	0.025	0.335	0.31
Oregon Total	0.365	0.3625	−0.0025
Washington Total	0.357	0.357	0.0

The major expenditures recommended by the Committee for the 2003–2004 year include $78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Control Committee (salaries, employee benefits, office rent, and similar administration expenses), $38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/shipper organizations for collating information used in generating crop and quality reports, and contingency reserves), and $1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were $63,712, $13,900, and $0, respectively.

The assessment rate recommended by the Committee was determined by reviewing the historical market development expenses of other organizations and past expenses for the Committee. Commodity shipments for the 2003–2004 season are estimated at 3,350,000 standard boxes, which should provide $1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $16,997.14) will be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 1,500 growers of fresh Bartlett pears in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural growers 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 whose annual receipts are less than $5,000,000.

According to the *Noncitrus Fruits and Nuts, 2002 Preliminary Summary* issued in January 2003 by the National Agricultural Statistics Service, the total farm gate value of fresh Bartlett pears in the regulated production area for 2002 was $34,782,000. Therefore, the 2002 average gross revenue for a fresh Bartlett pear grower in the regulated production area was $23,188. Further, based on Committee records and recent f.o.b. prices for fresh Bartlett pears, over 98 percent of the regulated handlers ship less than $5,000,000 worth of fresh Bartlett pears on an annual basis. Based on this information, it can be concluded that the majority of growers and handlers of fresh Bartlett pears in the States of Oregon and Washington may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. The Committee unanimously recommended 2003–2004 expenditures of $1,122,250 and an assessment rate of $0.335 per 44-pound standard box or container equivalent. The assessment rate is $0.31 higher than the rate previously in effect. The quantity of assessable fresh Bartlett pears for the 2003–2004 season is estimated at 3,350,000 standard boxes. Thus, the $0.335 rate should provide $1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee's

authorized reserve, should be adequate to cover budgeted expenses (§ 931.42).

The major expenditures recommended by the Committee for the 2003–2004 year include $78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Control Committee (salaries, employee benefits, office rent, and similar administration expenses), $38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/handler organizations for collating information used in generating crop and quality reports, and contingency reserves), and $1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were $63,712, $13,900, and $0, respectively.

The increase in the assessment rate is necessary for the Committee to establish market research and development projects. These market development projects will be executed through an agreement with Pear Bureau Northwest, which also oversees the market development projects for the Winter Pear Control Committee, administering Marketing Order No. 927. The Bartlett pear projects for 2003–2004 include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications through website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities will be implemented.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal Committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

	2002–2003	2003–2004	Net change
Oregon Bartlett Pear Commission	$0.34	$.0275	−$0.3125
Washington State Fruit Commission	0.332	0.022	−0.31
Northwest Fresh Bartlett Pear Marketing Committee	0.025	0.335	0.31
Oregon Total	0.365	0.3625	−0.0025
Washington Total	0.357	0.357	0.0

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–2004 season could range between $9.20 and $11.00 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 2003–2004 season as a percentage of total grower revenue could range between 3.6 and 3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Oregon and Washington fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues discussed. Like all Committee meetings, the May 29, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on September 10, 2003. Copies of the proposed rule were also mailed or sent via facsimile to all fresh Bartlett pear handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 25, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period. In addition, the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 931.231 is revised to read as follows:

§ 931.231 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.335 per 44-pound standard box or container equivalent is established for fresh Bartlett pears grown in Oregon and Washington.

Dated: October 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–26519 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–46–AD; Amendment 39–13342; AD 2003–21–07]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Model 525 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Cessna Aircraft Company (Cessna) Model 525 airplanes. This AD requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged. This AD is the result of analysis that reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed. We are issuing this AD to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

DATES: This AD becomes effective on October 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 22, 2003.

We must receive any comments on this AD by December 15, 2003.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail:* 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain ''Docket No. 2003–CE–46–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

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

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4196; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

What events have caused this AD? The FAA has received a report of an accident involving a Cessna Model 525 airplane where the pilot ditched the airplane in the water off the coast near Coupeville, Washington. The pilot reported a problem with the pitch trim system.

Although the final investigation by the National Transportation Safety Board (NTSB) is not complete, Cessna and FAA analysis reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed and also precludes disconnect of the pitch trim using the control wheel autopilot/trim disconnect switch.

What are the consequences if the condition is not corrected? Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

Is there service information that applies to this subject? Cessna has issued Citation Alert Service Letter ASL525–27–02, dated October 10, 2003.

What are the provisions of this service information? The service bulletin includes (as well as other information) procedures for disengaging and tie strapping the pitch trim and autopilot servo circuit breakers.

FAA's Determination and Requirements of the AD

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

Since the unsafe condition described previously is likely to exist or develop on other Cessna Model 525 airplanes of the same type design, this AD is being issued to correct a single-point failure in the pitch trim system, which could result in a runaway pitch trim condition where that the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

What does this AD require? This AD requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

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

Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is within 5 days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first.

Why is the compliance time of this AD presented in both hours TIS and calendar time? The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. The FAA is establishing the compliance time in both hours TIS and calendar time (with the prevalent being that which occurs first).

This would assure that the unsafe condition is addressed on both high-

usage and low-usage airplanes within a reasonable time period without inadvertently grounding any of the affected airplanes.

Comments Invited

Will I have the opportunity to comment prior to the issuance of the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–46–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–46–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 1. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–21–07 The Cessna Aircraft Company: Amendment 39–13342; Docket No. 2003–CE–46–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 22, 2003.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model 525 airplanes, serial numbers 525–0001, 525–0002, and 525–0004 through 525–0159, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of analysis that reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed. We are issuing this AD to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

What Must I Do To Address This Problem?

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

Actions	Compliance
(1) Disengage the PITCH TRIM circuit breaker located on the left circuit breaker panel. Install a tie strap (part number (P/N) MS3367–1–4 or equivalent part number) on the shaft of the PITCH TRIM circuit breaker to prevent the circuit breaker from being engaged.	Within 5 calendar days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first.
(2) Disengage the AP SERVOS circuit breaker located in the right circuit breaker panel. Install a tie strap (P/N MS3367–1–4 or equivalent part number) on the shaft of the AP SERVOS circuit breaker to prevent the circuit breaker from being engaged.	Within 5 calendar days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first.
(3) The Minimum Crew portion of Section II—Operating Limitations of the Airplane Flight Manual (AFM) provides information on applicable operating limitations with the autopilot inoperable.	Not Applicable.
(4) All affected airplanes were originally equipped with a P/N 6518351–3 or P/N 65138351–5 Trim PC Board Assembly. If a P/N 6518351–8 Trim PC Board Assembly is installed, contact the Wichita Aircraft Certification Office at the address in paragraph (f) of this AD to determine if the installed P/N 6518351–8 Trim PC board assembly is an alternative method of compliance to this AD.	Not Applicable.
(5) Cessna Citation Alert Service Letter ASL525–27–02, dated October 10, 2003, contains information related to this subject.	Not Applicable.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4196; facsimile: (316) 946–4107.

How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the document referenced in this AD from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500. You may view this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 10, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26276 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30393; Amdt. No. 3080]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective October 21, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2003.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP.

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on October 10, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
09/24/03	DC	Washington	Ronald Reagan Washington National	3/9311	VOR Rwy 15, Amdt 9B.
09/25/03	DC	Washington	Ronald Reagan Washington National	3/9357	VOR Rwy 15, Amdt 9B.
09/24/03	DC	Washington	Ronald Reagan Washington National	3/9310	VOR/DME or GPS Rwy 15, Amdt 1B.
09/26/03	DC	Washington	Washington Dulles Intl	3/9386	ILS Rwy 1R (Cat II, III), Amdt 22.

[FR Doc. 03–26307 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121 and 135

[Docket No. FAA–2003–15571; Amendment Nos. 119–8, 121–290, and 135–83]

RIN 2120–AI00

DOD Commercial Air Carrier Evaluators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on July 10, 2003 (68 FR 41214). That rule clarified existing regulations as they apply to Department of Defense (DOD) commercial air carrier evaluators.

EFFECTIVE DATE: This correction is effective on October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Tom Barrale, USAF, Department of Defense Air Mobility Command Liaison Officer to FAA Flight Standards Service, (202) 267–7088.

Correction

In the final rule FR Doc. 03–17459 published on July 10, 2003, (68 FR 41214), make the following corrections:

On page 41214, in column 3, in the heading section of the rule at the bottom of the page, beginning on line 4 of the heading, correct ''Amendment Nos. 119–8, 121–286, and 135–83'' to read ''Amendment Nos. 119–8, 121–290, and 135–83.''

Issued in Washington, DC on October 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

[FR Doc. 03–26445 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–1997–2262; Formerly FHWA 95–10]

RIN 2125–AD59

Advance Construction of Federal-aid Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA amends its regulation for advance construction of Federal-aid projects by removing certain provisions that limit the approval of advance construction projects and that allow for the payment of bond interest cost. These provisions are no longer consistent with section 115 of title 23, United States Code (U.S.C.), due to technical amendments provided in the National Highway System Designation Act of 1995 (NHS Act) and the Transportation Equity Act for the 21st Century (TEA–21).

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Max Inman, Federal-aid Financial Management Division, (202) 366–2853, or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service, (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

The FHWA published an interim final rule on part 630, subpart G on July 19, 1995, at 60 FR 36991. Interested persons were invited to submit comments to FHWA Docket No. 95–10. (The FHWA rearranged its docket system to accord with the electronic system adopted by the Department of Transportation in 1997. The FHWA Docket No. 95–10 was transferred and scanned as FHWA Docket No. 1997–2262.) On May 1, 2003 (68 FR 23239), the FHWA published a notice of proposed rulemaking (NPRM) proposing to remove certain provisions that limit the approval of advance construction projects and that allow for the payment of bond interest cost. Advance construction authority allows States to advance the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States.

Section 115, title 23, U.S. Code, authorizes advance construction projects. After FHWA approval, States can initiate the construction of a Federal-aid highway project using State funds without obligating Federal funds. Later, the State can request that the project be converted to a regular Federal-aid project by obligating all or a portion of the Federal share, provided that Federal-aid funds and obligation authority are available. The Federal government is only committed to the State for the amount of Federal funds obligated.

Section 308 of the NHS Act (Pub. L. 104–59, 109 Stat. 568, November 28, 1995), which replaced section 115(d) of title 23, U.S.C., requires that advance construction projects be on the approved Statewide Transportation Improvement Program (STIP), instead of requiring that future year authorizations be in effect when the advance construction project is approved. The STIP is a financially constrained program that covers a period of at least three years. This change allows the States more flexibility in financing projects and developing financial plans, and provides an opportunity for States to begin construction earlier.

Pre-construction procedures are found at 23 CFR part 630. The limitations outlined in § 630.707 are no longer valid, and will be removed, due to the changes made to title 23, U.S.C., section 115(d) by the NHS Act.

Section 1226(a) of the TEA–21, Public Law 105–178, 112 Stat. 107 (1998), as amended by section 9003(a) of Public Law 105–206, 112 Stat. 838 (1998), revised 23 U.S.C. 115 by removing obsolete subsections relating to payment of bond interest on certain Interstate construction projects. Based on changes in the law relating to payment of bond interest on certain Interstate construction projects, the FHWA removes §§ 630.705(c) and (d), and 630.711.

Discussion of Comments

We received one comment to the docket from a private individual. The comment welcomed changes in giving States more flexibility in financing projects and developing financial plans which will allow projects to begin construction earlier; and agreed that the FHWA should remove §§ 630.705(c) and (d), and 630.711. The comment also listed other benefits of the rule change including better use of taxpayers' dollars and stimulating the economy. While the FHWA agrees with the comment, the primary reason for the rule change is to conform to revisions in the authorizing statute.

Conclusion

Since no comments were received opposing the language proposed in the NPRM, the FHWA is adopting the revisions proposed in the NPRM as final without change.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has considered the impact of this final action and has determined that it is not a significant rulemaking action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. This action will not adversely affect, in a material way, any sector of the economy. In addition, this final rule will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements or grants. This action amends current regulations governing the advance construction of Federal-aid projects based on changes in law. It is not anticipated that this action will affect the Federal funding allocated to the States.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act [5 U.S.C. 601–612], the FHWA has evaluated the effects of this action rule on small entities. The FHWA believes that this action will not have a significant economic impact on a substantial number of small entities. States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this final rule will not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this final rule directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This final action will not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the sector, of $100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

Executive Order 12630 (Taking of Private Property)

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, and believes that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Bonds, Government contracts, Grant programs, transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: October 15, 2003.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, as set forth below:

PART 630—[AMENDED]

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart G—Advance Construction of Federal-Aid Projects [Amended]

§ 630.705 [Amended]

■ 2. In § 630.705, remove paragraphs (c) and (d).

§ 630.707 [Removed and Reserved]

■ 3. Remove and reserve § 630.707.

§ 630.711 [Removed]

■ 4. Remove § 630.711.

[FR Doc. 03–26557 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–041]

Drawbridge Operation Regulations; Lower Grand River (Alternate Route), Grosse Tete, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Grosse Tete Swing Span Highway Bridge across Lower Grand River (Alternate Route), mile 47.0, at Grosse Tete, Iberville Parish, LA. This deviation allows the bridge to remain closed to navigation at various times from November 3, 2003 through November 17, 2003. The deviation is necessary to perform rehabilitation and post-tensioning work on the drawbridge.

DATES: This deviation is effective from 9 a.m. on November 3, 2003 through 3 p.m. on November 17, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

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

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to perform rehabilitation and post-tensioning work on the swing span bridge across Lower Grand River (Alternate Route) at mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 9 a.m. until 3 p.m., Monday through Friday from November 3, 2003 until November 17, 2003. The bridge will open for the passage of vessels from noon until 12:30 p.m. during the closure period. If the work is accomplished in a shorter period of time, the bridge will be returned to normal operation in accordance with Title 33, Code of Federal Regulations, Section 117.478(b). Notice of return to normal operations prior to November 17, 2003 will be published by Broadcast Notice to Mariners.

The swing span bridge has a vertical clearance of 2.5 feet above mean high water, elevation 9.0 feet Mean Sea Level and 11.5 feet above mean low water, elevation 0.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational craft. There are no commercial fishermen that transit the waterway at the bridge site. Based on prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 490 times per month. In accordance with 33 CFR 117.478(b), the draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, opens on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday, except Federal holidays. The draw opens on signal at any time for an emergency aboard a

vessel. Alternate routes are available. Mariners may transit the area via the Mississippi River through the Harvey Canal lock or via the Atchafalaya River through the Old River lock.

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

Dated: October 14, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–26556 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[CGD17–99–002]

RIN 1625–AA01

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

AGENCY: Coast Guard, DHS.

ACTION: Interim rule; reopen comment period.

SUMMARY: The Coast Guard is re-opening the comment period for its interim rule published in April 2000, prior to publishing the final rule. The interim rule created a seven-knot speed limit zone that is currently in effect. This rule also re-designated the safety zone in Ketchikan Harbor as an anchorage to reflect its actual use as an anchorage for large passenger vessels. Due to the length in time since the comment period for the interim rule closed, the Coast Guard is providing an additional opportunity for public comment.

DATES: Comments and related material must reach the Coast Guard on or before December 22, 2003.

ADDRESSES: You may mail comments and related material to the USCG Marine Safety Office Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska 99801. USCG Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at USCG Marine Safety Office Juneau between 8 a.m. and 8 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Tyrone Jones, Senior Investigating Officer, USCG Marine Safety Office Juneau, Alaska, telephone (907) 463–2470.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, [CGD17–99–002], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to USCG Marine Safety Office Juneau at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On March 25, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK'' in the **Federal Register** (64 FR 14414). On June 2, 1999, the Coast Guard published an interim rule in the **Federal Register** (64 FR 29554). A correction was issued on June 15, 1999 in the **Federal Register** (64 FR 32103).

On April 7, 2000, the Coast Guard published a second interim rule entitled ''Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK'' in the **Federal Register** (65 FR 18242). The comment period for this interim rule ended on October 31, 2000.

Background and Purpose

The Interim Rule published in 1999 extended the seven-knot speed limit on Tongass Narrows northward to Tongass Narrows Buoy 9 in order to address the needs of floatplane traffic. Non-commercial open skiffs were exempt from the seven-knot speed limit to allow them to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion.

The Interim Rule also re-designated a safety zone in Ketchikan Harbor as an anchorage. Vessels transiting the anchorage other than those engaged in anchoring evolutions are required to proceed through the anchorage by the most direct route without delay or sudden course changes. The re-designation of the area reflected its actual use as an anchorage for large passenger vessels. The slow or erratic operation of small vessels in the former safety zone made it very difficult for large vessels to safely maneuver to and from anchor. The requirement that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, made the final approach, anchoring, and departure of large passenger vessels, safer for the vessels involved.

In April, 2000, a second Interim Rule was published addressing concerns from the public. The Coast Guard revised the exemption to the seven-knot speed limit to include all small vessels of 23 feet or less, registered length. This change allowed an increased number of small vessels that create little wake to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion.

Reopening the Comment Period

The comment period for the interim rule published in April 2000 ended October 31, 2000. In order to give the public a chance to make additional comments, the Coast Guard is reopening the comment period for this interim rule, prior to publishing a final rule. All comments must reach the public docket at the address found in **ADDRESSES** on or before December 22, 2003.

Dated: October 9, 2003.

D.W. Ryan,

Captain, Coast Guard, Commander, Seventeenth Coast Guard District (Acting).

[FR Doc. 03–26554 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska 03–003]

RIN 1625–AA00

Security Zone; Port of Anchorage, Knik Arm, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 1000-yard security zone in the navigable waters off the Port of Anchorage, Alaska. This security zone temporarily closes all navigable waters extending out from the Port of Anchorage. This action is necessary to protect the Port of Anchorage, vessels moored at the Port, and its personnel against sabotage or subversive acts.

DATES: This temporary final rule is effective from 12:01 p.m. on September 23, 2003 until 12:01 p.m. on March 23, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Western Alaska 03–001) and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, AK between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Robert Forgit, USCG Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Port of Anchorage, Alaska recently experienced a terrorist threat of damage to the port and its personnel. We are immediately establishing this temporary security zone to protect the Port, the vessels within the Port, and its personnel from sabotage or subversive acts.

Background and Purpose

In light of a recent terrorist threat to the Port of Anchorage, the Coast Guard is establishing a security zone on the navigable waters off the Port of Anchorage to safeguard the Port, the vessels within the Port, and its personnel from sabotage or subversive acts and incidents of a similar nature. This security zone prohibits movement within or entry into the specified area.

This rule establishes a temporary 1000-yard security zone in the navigable waters of Knik Arm off the Port of Anchorage, Alaska. This security zone is designed to permit the safe loading and unloading of vessels moored at the Port and to protect its personnel from possible sabotage, subversive acts or incidents of a similar nature.

Discussion of Rule

The Coast Guard is establishing a temporary 1000-yard security zone in the navigable waters of Knik Arm off the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14′ North, 149°52.78′ West, then west to a point located at 61°15.14′ North, 149°53.84′ West, then south to a point located at 61°14.39′ North, 149°53.64′ West, then east to a point located at 61°13.94′ North, 149°53.55′ West; thence along the shoreline back to the beginning point. All cargo vessels scheduled to moor at the Port of Anchorage and that have submitted the required Advance Notice of Arrival will be allowed to transit the zone. All tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist the vessels into the Port of Anchorage, may transit the security zone when actually assisting a vessel. The limited size of the zone is designed to minimize the impact on other vessels transiting to facilities near the Port of Anchorage.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This finding is based on the limited size of the security zone which will have minimal, if any, impact on vessels transiting the waters of Knik Arm and to facilities near the Port of Anchorage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the vicinity of the Port of Anchorage.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Marine traffic will still be able to transit through Knik Arm during the zone's activation. Additionally, vessels with cargo to load or unload at the Port of Anchorage will not be precluded from mooring at or getting underway from the Port. Tow vessels contracted to assist vessels will not be precluded from transiting the zone to assist vessels.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T17–017 to read as follows:

§ 165.T17–017 Security Zone: Port of Anchorage, Knik Arm, Alaska.

(a) *Location.* The following area is a security zone: All navigable waters within 1000-yards of the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14′ North, 149°52.78′ West; thence west to a point located at 61°15.14′ North, 149°53.84′ West; thence south to a point located at 61°14.39′ North, 149°53.64′ West; thence east to a point located at 61°13.94′ North, 149°53.55′ West; thence along the shoreline back to the beginning point.

(b) *Effective period.* This section is effective from 12:01 p.m., September 23, 2003 to 12:01 p.m., March 23, 2004.

(c) *Regulations.* (1) For the purpose of this section, the general regulations contained in 33 CFR 165.33 apply to all but the following vessels in the areas described in paragraph (a):

(i) Vessels scheduled to moor and offload or load cargo at the Port of Anchorage that have provided the Coast Guard with an Advance Notice of Arrival.

(ii) Tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist vessels to the dock at the Port of Anchorage.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port representative or the designated on-scene patrol personnel. These personnel are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 23, 2003.

Thomas D. Harrison,

Commander, Coast Guard, Acting Captain of the Port, Western Alaska.

[FR Doc. 03–26555 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # OR–02–002a; FRL–7568–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Klamath Falls PM–10 Nonattainment Area Redesignation to Attainment and Designation of Area for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Klamath Falls to EPA for approval and concurrently requested that EPA redesignate the Klamath Falls nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is approving the maintenance plan and redesignating the Klamath Falls PM–10 nonattainment area to attainment.

DATES: This direct final rule will be effective December 22, 2003, unless EPA receives adverse comments by November 20, 2003. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Electronic comments should be sent either to *r10.aircom@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public

inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, State and Tribal Programs Unit, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone number: (206) 553–0782, or e-mail address: *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

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I. What Is the Purpose of This Action?

EPA is approving the Klamath Falls PM–10 Maintenance Plan and redesignating the Klamath Falls PM–10 nonattainment area to attainment. Klamath Falls is a city in south central Oregon with a population of approximately 40,000. In the late 1980's Klamath Falls recorded some of the highest PM–10 concentrations in the country.

II. Why Was Klamath Falls Designated Nonattainment?

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Klamath Falls, Oregon, area was designated nonattainment for PM–10 by operation of law because the area had been designated a Group I planning area before November 15, 1990. Group I planning areas were identified on August 7, 1987. See 52 FR 29383. On October 31, 1990, EPA clarified the description of certain Group I planning areas, including the Klamath Falls area. See 55 FR 45799. These areas were called ''initial PM–10 nonattainment areas.'' On March 15, 1991, EPA announced these areas and classified them as moderate PM–10 nonattainment areas. See 56 FR 11101.

III. How Can a Nonattainment Area Be Redesignated to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I (57 FR 13498) provide the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* The criteria for redesignation are:

(1) The Administrator determines that the area has attained the relevant national ambient air quality standard;

(2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(5) the State containing the area has meets all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved. The following is a summary of EPA's analysis and conclusion regarding the maintenance plan of Klamath Falls and the State's redesignation request. Additional detail regarding EPA's review and analysis may be found in the technical support document which is located in the public docket for this action.

IV. Did the State Follow Appropriate Administrative Procedures Before Submitting All the Relevant Material to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA.

The Oregon Department of Environmental Quality (ODEQ), which has regulatory authority for sources of air pollution in the Klamath Falls PM–10 nonattainment area, developed the PM–10 maintenance plan. On May 20, 2002, ODEQ notified the public of the public hearing on the plan in the *Herald and News,* Klamath Falls, Oregon. On June 25, 2002, ODEQ held the public hearing at the Klamath Falls City Hall, Council Chambers. On October 4, 2002, the State of Oregon adopted *A Plan for Maintaining the National Ambient Air Quality Standards for Particulate Matter (PM–10) In Klamath Falls Urban Growth Boundary Section 4.56 of the State Implementation Plan.* On November 4, 2002, the State submitted the redesignation request and maintenance plan to EPA.

The State meets the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

V. Evaluation of the Redesignation Request and Maintenance Plan

A. The Area Must Have Attained the PM–10 NAAQS

Section 107(d)(3)(E)(i) of the CAA requires that the Administrator determine that the area has attained the applicable NAAQS. The primary 24-hour NAAQS for Particulate Matter with an aerodynamic diameter equal to or less than 10 micrometers (PM–10) is 150 micrograms per cubic meter ($\mu g/m^3$) for

a 24-hour period (midnight to midnight), not to be exceeded more than once per year averaged over three calendar years. The annual NAAQS for PM–10 is 50 μg/m^3 annual arithmetic average, averaged over three calendar years. PM–10 in the ambient air is measured by a reference method based on 40 CFR part 50, appendix J. EPA considers an area as attaining the PM–10 NAAQS when all of the PM–10 monitors in the area have an exceedance rate of 1.0 or less averaged over three calendar years. (*See* 40 CFR 50.6 and 40 CFR part 50, appendix J.) In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Oregon's redesignation request for the Klamath Falls PM–10 area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1992 through 2002 show there have been no exceedances of the PM–10 standard since 1992. These data were collected and analyzed as required (*see* 40 CFR 50.6 and 40 CFR part 50, appendix J) and have been stored in EPA's Air Quality System (AQS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AQS. The Klamath Falls area has not violated the PM–10 standard since 1992 and continues to demonstrate attainment through calendar year 2002.

B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) of the CAA requires that an area must meet all applicable requirements under section 110 and Part D of the CAA. EPA interprets this to mean the State must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. Below is a summary of how Oregon meets these requirements.

C. Clean Air Act (CAA) Section 110 Requirements

On January 25, 1972, Oregon submitted the SIP to EPA. EPA approved the SIP on May 31, 1972. *See* 37 FR 10888. For purposes of redesignation, the Oregon SIP, including the Klamath Falls PM–10 SIP, were reviewed to ensure that the SIP satisfies the CAA requirements of section 110(a)(2). See 40 CFR 52.1970 for a complete listing of subsequent Oregon SIP submittals and EPA approvals.

D. Part D Requirements

Part D provides general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the applicable general provisions of subpart 1 (section 172) as well as the specific PM–10 provisions in subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.''

E. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Klamath Falls PM–10 nonattainment area.

Oregon included in the proposed Klamath Falls maintenance plan an emission inventory for calendar year 1996. This year corresponds to the year used in calculating the design value (discussed below) which is at a level well below the standard. This inventory thus represents emissions that are at a level to protect the standard. The inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

F. Section 172(c)(5)—New Source Review (NSR)

The Clean Air Act Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. *See* section 189(a) of the Act. The General Preamble calls for states to implement their existing NSR programs during the interval preceding our formal approval of their revised NSR programs.

In Klamath Falls, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon the effective date of redesignation. The Oregon Department of Environmental Quality rules for new source review that meet both attainment and nonattainment area requirements (provisions of OAR Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268), that were in effect on October 8, 2002, were approved on January 22, 2003, (68 FR 2953) as meeting the requirements of title I, parts C and D of the Clean Air Act.

Portions of Divisions 222, 224, and 225 were revised as part of the Grants Pass PM–10 Maintenance Plan and the Klamath Falls Maintenance Plan development effort. These rule revisions were approved by EPA on January 22, 2003 (68 FR 2953).

Section 0040(3)(b) of Division 204, effective October 8, 2002, is approved in this action. This section is revised to add Klamath Falls to the PM–10 Maintenance Area list.

G. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area.

The State of Oregon has operated a PM–10 monitor in the Klamath Falls area since 1987 at the Peterson School Site. In the proposed Klamath Falls maintenance plan, the State of Oregon commits to continued operation of the PM–10 monitoring station.

H. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

States containing initial moderate PM–10 nonattainment areas were required to submit, by November 15, 1991, a nonattainment area plan that implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrate whether it was practicable to attain the PM–10 NAAQS by December 31, 1994. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. Oregon's CAA part D initial PM–10 plan for the Klamath Falls PM–10 nonattainment area was submitted on November 15, 1991. The State submitted additional information and provisions on September 20, 1995. EPA approved the Klamath Falls PM–10 attainment plan on April 14, 1997. See 62 FR 18047. Thus, the area has a fully approved nonattainment area SIP.

I. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable

implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The PM–10 emission reductions for the Klamath Falls area were achieved through a number of permanent and enforceable control measures including a mandatory woodstove certification program for all new stove sales, a mandatory woodstove and open burning ordinance, a ban on the sale and installation of uncertified woodstoves, and major source NSR. EPA approved these control measures as part of the part D SIP submittal on April 14, 1997. These control measures will continue into the maintenance period for the Klamath Falls area.

The State has demonstrated that the air quality improvements in the Klamath Falls area are the result of permanent enforceable emission reductions and are not the result of either economic trends or meteorology. EPA concludes that the modeling demonstration shows the area will meet the NAAQS even under the worst case meteorological conditions.

J. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA. As described below, Oregon has complied with the core requirements necessary for an approved maintenance plan. Accordingly, today's action approves the maintenance plan for Klamath Falls, Oregon.

K. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the PM–10 NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The Klamath Falls maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1996. This year is consistent with the design value which was calculated for 1996.

L. Demonstration of Maintenance

EPA policy contained in the September 4, 1992, Calcagni memo, requires that the maintenance plan contain the same level of air quality modeling to demonstrate maintenance that was used in the original attainment plan to demonstrate attainment. The Klamath Falls attainment plan approved by EPA on April 14, 1997, contained simple proportional modeling. This approach was acceptable because Klamath Falls is a simple air shed and residential wood combustion is a primary source of emissions contributing to the measured violations. EPA agreed with Oregon that simple proportional modeling of emissions from 1996 to the maintenance year of 2015 and the use of the 1996 design value would be an adequate approach for the maintenance demonstration. Oregon projected emissions for the Klamath Falls area to 2015 using appropriate growth factors for population and industrial growth. The increase in emissions from 1996 to 2015 was used to predict both worst case 24-hour PM–10 and annual PM–10 concentrations.

The 24-hour 1996 design value is 95.2 $\mu g/m^3$, based on measured air quality. The 1996 annual design value is 21.0 $\mu g/m^3$. Using the 1996 emission inventory, growth projections to 2015, and an additional 10% increment above the projected growth in motor vehicle emissions in 2015, the projected PM–10 levels will be 112.4 $\mu g/m^3$, worst case 24-hour concentration, and 25.3 $\mu g/m^3$, annual average concentration. These PM–10 concentrations are below the level of the 24-hour and annual standards and therefore maintenance is demonstrated.

M. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. Section 4.56.4.5 of the Klamath Falls maintenance plan provides for adequate ambient monitoring to be continued in the area for the maintenance period.

N. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to correct any violation of the NAAQS that occurs after redesignation. At a minimum, the contingency provisions must include a commitment that the State implement all measures contained in the nonattainment SIP prior to redesignation.

The Klamath Falls maintenance plan continues implementation of the control measures contained in the nonattainment area SIP, with the exception of the nonattainment area major new source review. Major new source review will continue through the PSD program. Thus, the State has met the minimum requirement.

In addition to the minimum requirements, the Klamath Falls maintenance plan contains a contingency plan that consists of two phases. Phase I is triggered if PM–10 concentrations equal or exceed 90% of the level of either the 24-hour or annual standards. Phase I would require a review of various residential and outdoor burning requirements and alternative burning practices. Phase 2 of the contingency plan would require the implementation of strategies identified in Phase I as well as nonattainment permitting requirements for all new or modified major sources.

O. Transportation Conformity

Section 176(c)(2)(A) of the CAA requires regional transportation plans to be consistent with the motor vehicle emissions budget (MVEB) contained in the applicable air quality plans for the Klamath Falls area. Unless EPA receives adverse comments on the MVEB for Klamath Falls, the motor vehicle emissions budget is deemed adequate to maintain the PM–10 standards through the maintenance year of 2015. The Oregon Department of Transportation, and the U.S. Department of Transportation are required to use the MVEB in this maintenance plan for future transportation conformity determinations.

The MVEBs to protect for both the 24-hour and annual National Ambient Air Quality Standards for PM–10 are proposed for approval for Klamath Falls as follows:

KLAMATH FALLS PM_{10} MOTOR VEHICLE EMISSIONS BUDGETS

[pounds per winter day]

Year	2000	2005	2010	2015
MVEB	2949	3208	3466	3725

KLAMATH FALLS PM_{10} MOTOR VEHICLE EMISSIONS BUDGETS

[tons per year]

Year	2000	2005	2010	2015
MVEB	548	596	644	692

Note that MVEBs for intervening years must be interpolated. In the case of Klamath Falls both the 24-hour and annual budgets must be satisfied in order to find that transportation plans conform. The TSD summarizes how the MVEBs meets the adequacy criteria

contained in the transportation conformity rule (40 CFR 93.118(e)(4)).

VI. Final Action

EPA is approving the Klamath Falls PM–10 maintenance plan and redesignating the Klamath Falls, Oregon PM–10 nonattainment area to attainment.

VII. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office, under Docket number OR–02–002. The official public file consists of the documents specifically referenced in this action, and other information related to this action. The official public rulemaking file is available for public viewing at the Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking OR–02–002'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *E-mail.* You may send comments by electronic mail (e-mail) to *r10.aircom@epa.gov,* please including the text ''Public comment on proposed rulemaking OR–02–002'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* You may use Regulations.gov as an alternative method to submit electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

c. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Please include the text ''Public comment on proposed rulemaking OR–02–002'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

C. How Should I Submit CBI to the EPA?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). EPA will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

VIII. 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 6, 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. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 22, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 24, 2003.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(140) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(140) On November 4, 2002, the Oregon Department of Environmental Quality requested the redesignation of Klamath Falls to attainment for PM–10. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rule 340–204–0040(3)(b) as effective October 8, 2002.

■ 3. Section 52.1973 is added to subpart MM to read as follows:

§ 52.1973 Approval of plans.

(a) Carbon Monoxide [Reserved]

(b) Lead. [Reserved]

(c) Nitrogen Dioxide. [Reserved]

(d) Ozone. [Reserved]

(e) Particulate Matter.

(1) EPA approves as a revision to the Oregon State Implementation Plan, the Klamath Falls PM–10 maintenance plan submitted to EPA on November 4, 2002.

(2) [Reserved]

(f) Sulfur Dioxide. [Reserved]

PART 81—[AMENDED]

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

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

■ 2. In § 81.338, the table entitled ''Oregon PM–10,'' the entry for Klamath Falls is revised to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Klamath Falls (the Urban Growth Boundary Area)	12/22/03	Attainment		
* * * * * * *				

* * * * *

[FR Doc. 03–26540 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7817]

Suspension of Community Eligibility

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

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

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.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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

Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 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.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Massachusetts: Scituate, Town of, Plymouth County.	250282	September 6, 1974, Emerg.; September 30, 1977, Reg.; October 16, 2003.	Oct. 16, 2003 ...	Oct 16, 2003.
Region V				
Ohio:				
Cheshire, Village of, Gallia County	390186	July 24, 1975, Emerg.; August 15, 1983, Reg.; October 16, 2003, Susp;	.....do*	Do.
Crown City, Village of, Gallia County	390187	April 22, 1983, Emerg.; July 5, 1983, Reg.; October 16, 2003, Susp	.....do	Do.
Gallia County, Unincorporated Areas	390185	March 2, 1977, Emerg.; September 29, 1989, Reg.; October 16, 2003, Susp	.....do	Do.
Gallipolis, City of, Gallia County	390188	February 14, 1977, Emerg.; July 5, 1983, Reg.; October 16, 2003, Susp	.....do	Do.
Rio Grande, Village of, Gallia County	390879	May 20, 1981, Emerg.; September 4, 1985, Reg.; October 16, 2003, Susp	.....do	Do.
Vinton, Village of, Gallia County	390189	February 6, 1979, Emerg.; October 16, 2003, Reg.; October 16, 2003, Susp	.....do	Do.

*do = Ditto
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 10, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–26454 Filed 10–20–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2891]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment, 4 FCC Rcd 2413 (1989), and Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications, 8 FCC Rcd 4735 (1993).

DATES: Effective October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for 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. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 264C1 and adding Channel 264B at Corning and by removing Channel 232A and adding Channel 232B1 at Jackson.

■ 3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 268C and adding Channel 269C1 at Eagle and by removing Channel 269A and adding Channel 268C at Fort Morgan.

■ 4. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 263C3 and adding Channel 263C2 at Newberry.

■ 5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 237C3 and adding Channel 236C3 at Orofino and by removing Channel 237C1 and adding Channel 237C at Sandpoint.

■ 6. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 239A and adding Channel 239C3 at South Fort Polk.

■ 7. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 257C1 and adding Channel 257C at Elma.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26498 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2892; MB Docket No. 03–14; RM–10629]

Radio Broadcasting Services; Fredericksburg and Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Jayson and Janice Fritz, this document substitutes Channel 289C3 for Channel 289C2 at Mason, Texas, reallots Channel 289C3 to Fredericksburg, Texas, and modifies the outstanding construction permit (File No. BPH–19960826MS) to specify operation on Channel 289C3 at Fredericksburg. *See* 68 FR 5860, published February 5, 2003. The reference coordinates for the Channel 289C3 allotment at Fredericksburg, Texas, are 30–23–37 and 99–01–05. With this action, the proceeding is terminated.

DATES: Effective November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MB Docket No. 03–14, adopted September 10, 2003, and released September 12, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Fredericksburg, Channel 289C3 and by removing Channel 289C2 at Mason.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26500 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2908; MB Docket No. 03–143, RM–10726; MB Docket No. 03–146, RM–10728]

Radio Broadcasting Services; Cove, AR and Robert Lee, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford, allots Channel 232A at Cove, Arkansas, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 232A can be allotted to Cove in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.9 kilometers (9.2 miles) southwest to avoid a short-spacing to the license site of Station KOLX, Channel 233C2, Barling, AR. The reference coordinates for Channel 232A at Cove are 34–22–17 North Latitude and 94–33–12 West Longitude. The Audio Division, at the request of Katherine Pyeatt, allots Channel 289A at Robert Lee, Texas, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 289A can be allotted to Robert Lee in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 14.3 kilometers (8.9 miles) north to avoid a short-spacing to the vacant allotment site of Channel 289C1, Ozona, Texas. The reference coordinates for Channel 289A at Robert Lee are 32–00–56 North Latitude and 100–26–20 West Longitude. Although concurrence has been requested for Channel 289A at Robert Lee, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes.'' Filing windows for Channel 232A at Cove, Arkansas and Channel 289A at Robert Lee, Texas will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective November 17, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 03–143 and 03–146, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Cove, Channel 232A.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Robert Lee, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26501 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2911; MB Docket No. 03–145, RM–10730]

Radio Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Dana J. Puopolo, allots Channel 229A to Ridgecrest, California, as the community's fourth FM commercial service. See 68 FR 42663, July 18, 2003. Channel 229A can be allotted to Ridgecrest, in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 229A at Ridgecrest are 35–37–30 North Latitude and 117–40–12 West Longitude. A filing window for Channel 229A at Ridgecrest, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 17, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 03–145, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 229A at Ridgecrest.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26502 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2909; MB Docket No. 03–153, RM–10727; MB Docket No. 03–154, RM–10736]

Radio Broadcasting Services; Bangs, Texas and De Beque, Colorado

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford, allots Channel 250C3 at Bangs, Texas, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 250C3 can be allotted to Bangs in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) west to avoid a short-spacing to the license sites of Station KATX, Channel 249A, Eastland, Texas and Station KBFB, Channel 250C, Dallas, Texas. The reference coordinates for Channel 250C3 at Bangs are 31–41–32 North Latitude and 99–15–17 West Longitude. Although concurrence has been requested for Channel 250C3 at Bangs, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes.'' The Audio Division, at the request of Garfield-Mesa County Line Broadcasters, allots Channel 275C3 at De Beque, Colorado, as the community's first local aural transmission service. *See* 68 FR 42663, July 18, 2003. Channel 275C3 can be allotted to De Beque in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 7.1 kilometers (4.4 miles) northwest to avoid a short-spacing to the license site of Station KPRU, Channel 277C2, Delta, Colorado. The reference coordinates for Channel 275C3 at De Beque are 39–22–36 North Latitude and 108–16–33 West Longitude. Filing windows for Channel 250C3 at Bangs, Texas and Channel 275C3 at De Beque, Colorado will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective November 17, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 03–153 and 03–154, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding De Beque, Channel 275C3.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bangs, Channel 250C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26503 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 203
Tuesday, October 21, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, that currently requires repetitive inspections to find cracks of a certain bulkhead web of the fuselage at certain locations, and repair if necessary. The actions specified by that AD are intended to prevent cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage. This action would provide an optional terminating modification for certain airplanes. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 20, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–267–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 10, 1997, the FAA issued AD 97–24–02, amendment 39–10209 (62 FR 61436, November 18, 1997), applicable to certain Bombardier Model CL–600–1A11, –2A12, and –2B16 series airplanes, to require repetitive inspections to find cracks of a certain bulkhead web of the fuselage at certain locations, and repair if necessary. That action was prompted by mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage.

Actions Since Issuance of Previous Rule

In the preamble to AD 97–24–02, we specified that we considered the requirements ''interim action'' and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this

proposed AD follows from that determination.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 600–0680 (for Model CL–600–1A11 (CL–600) series airplanes), Service Bulletin 601–0503 (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A/–3R) series airplanes), and Service Bulletin 604–53–006 (for Model CL–600–2B16 (CL–604) series airplanes), all dated November 30, 1999. The service bulletins describe procedures for modification of the pressure bulkhead at FS 409.00. The modification includes an eddy current inspection for cracking of the bulkhead; reinforcement of the pressure bulkhead frame; and a pressure test, leak test, operational test, and functional test of all systems.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–1997–16R2, dated May 31, 2001, in order to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 97–24–02 to continue to require repetitive inspections to find cracks of a certain bulkhead web of the fuselage at certain locations, and repair if necessary. For certain airplanes, this proposed AD also would provide for an optional terminating modification for the repetitive inspections. Consistent with the findings of TCCA, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to detect cracking before it represents a hazard to the airplane. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins/Canadian Airworthiness Directive

The Canadian airworthiness directive specifies reporting crack findings to the manufacturer; however, this proposed AD would not require such action.

The Accomplishment Instructions of the referenced service bulletins describe procedures for completing an Incorporation Notice. However, this proposed AD would not require such action.

In addition, although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or TCCA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or TCCA would be acceptable for compliance with this proposed AD.

Explanation of Change Made To Existing Requirements

We have changed all references to a ''detailed visual inspection'' in the existing AD to a ''detailed inspection'' in this action.

Cost Impact

There are approximately 237 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are required by AD 97–24–02 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $130 per airplane, per inspection cycle.

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

The optional terminating modification, if done, would take between 125 and 300 work hours per airplane, depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, we estimate the cost of the modification to be between $8,125 and $19,500 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10209 (62 FR 61436, November 18, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–267–AD. Revises AD 97–24–02, Amendment 39–10209.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A/–3R) series airplanes, serial numbers 5001 through 5194 inclusive; and Model CL–600–2B16 (CL–604) series airplanes, serial numbers 5301 through 5352 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage, accomplish the following:

Restatement of Requirements of AD 97–24–02: Detailed Inspections/Repair

(a) For Model CL–600–1A11 (CL–600) airplanes: Prior to the accumulation of 1,900 total landings, or within 100 landings after December 3, 1997 (the effective date of AD 97–24–02, amendment 39–10209), whichever occurs later, perform a detailed inspection to detect cracks at FS 409.00 of the bulkhead web (part number (P/N) 600–32014–71/–95/–105), in accordance with Canadair Challenger Service Bulletin 600–0679, dated September 12, 1997.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no crack is detected, repeat the detailed inspection thereafter at intervals not to exceed 600 landings.

(2) If any crack is detected and if all three of the conditions specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD are met, within 600 landings or 12 months after the crack is detected, whichever occurs first, repair the crack in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Until the repair is accomplished, repeat the detailed inspection at intervals not to exceed 100 landings.

(i) No more than one crack exists at each corner radius, as specified in the service bulletin; and

(ii) No crack extends under the angles having P/N 600–32014–13 and P/N 600–32014–15 on the aft side of the bulkhead web; and

(iii) No crack exists in angles having P/N 600–32014–13 and P/N 600–32014–15 on the aft side of the bulkhead web.

(3) If any crack other than that identified in paragraph (a)(2) of this AD is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York ACO.

(b) For Model CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A/–3R), and CL–600–2B16 (CL–604) series airplanes: Prior to the accumulation of 1,100 total landings, or within 100 landings after December 3, 1997, whichever occurs later, perform a detailed inspection to detect cracks at FS 409.00 of the bulkhead web (P/N 600–32014–105/–137), in accordance with Canadair Challenger Service Bulletin 601–0501, dated September 12, 1997 (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A/–3R) series airplanes); or Canadair Challenger Service Bulletin 604–53–007, dated September 30, 1997 (for Model CL–600–2B16 (CL–604) series airplanes); as applicable.

(1) If no crack is detected, repeat the detailed inspection thereafter at intervals not to exceed 600 landings.

(2) If any crack is detected and if all three of the conditions specified in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD are met, within 600 landings or 12 months after the crack is detected, whichever occurs first, repair the crack in accordance with a method approved by the Manager, New York ACO. Until the repair is accomplished, repeat the detailed inspection at intervals not to exceed 100 landings.

(i) No more than one crack exists at each corner radius, as specified in the service bulletin; and

(ii) No crack extends under the angles having P/N 600–32014–113 and P/N 600–32014–115 on the aft side of the bulkhead web; and

(iii) No crack exists in angles having P/N 600–32014–113 and P/N 600–32014–115 on the aft side of the bulkhead web.

(3) If any crack other than that identified in paragraph (b)(2) of this AD is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York ACO.

New Requirements of This AD: Optional Terminating Modification

(c) For airplanes on which no crack has been found during accomplishment of any inspection required by AD 97–24–02; or on which the pressure bulkhead was not previously repaired: Modification of the pressure bulkhead at FS 409.00 (including inspection, installation of reinforcing material, and tests) by accomplishing all the actions specified in paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0503 (for Model CL–601 and CL–601–3A/–3R series airplanes), Service Bulletin 600–0680 (for Model CL–600 series airplanes), or Service Bulletin 604–53–006 (for Model CL–604 series airplanes); all dated November 30, 1999, per the applicable service bulletin, terminates the repetitive inspections required by this AD.

Repair

(d) If any crack is found during any inspection specified in paragraph (c) of this AD: Before further flight, repair in accordance with a method approved by the Manager, New York ACO; or Transport Canada Civil Aviation or its delegated agent.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–1997–16R2, dated May 31, 2001.

Issued in Renton, Washington, on October 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26469 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16214; Airspace Docket No. 02–ANM–11]

Proposed Revision of Class E Airspace at Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise Class E airspace at Kalispell/Glacier Park International Airport, Kalispell, MT. Instrument Flight Rules (IFR) operations transitioning between Helena, MT, and Kalispell, MT, makes this proposal necessary. This additional airspace extending 1,200 feet or more above the surface of the earth is necessary to provide controlled airspace for the containment and safety of IFR flights transitioning between Helena, MT, and Kalispell/Glacier Park International Airport at Kalispell, MT.

DATES: Comments must be received on or before December 5, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–16214; Airspace Docket No. 03–ANM–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final

dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify Docket No. FAA–2003–16214; Airspace Docket 02–ANM–11, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. FAA–2003–16214; Airspace Docket 02–ANM–11.'' the postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by adding additional Class E airspace at Kalispell, MT. This additional airspace extending 1,200 feet or more above the surface of the earth is necessary to provide additional controlled airspace for the containment and safety of IFR flights transitioning between Helena, MT, and Kalispell/Glacieer Park International Airport Kalispell, MT.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Kalispell, MT (Revised)

Kalispell/Glacier Park International Airport, MT
[Lat. 48°18′41″ N., long. 114°15′19″ W.]

Smith Lake Non Directional Beacon (NDB)

[Lat. 48°06′30″ N., long. 114°27′41″ W.]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Kalispell/Glacier Park International Airport, and within 4.8 miles each side of the 035° and 215° bearings from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 47°30′00″ N., long. 112°37′30″ W.; to lat. 47°43′30″ N., long. lat. 112°37′30″ N., long. 48°07′30″ N., long. 113°30′00″ W to lat. 48°30′00″ N., long. 113°30′00″ W.; to lat. 48°30′00″ N., long. 116°03′35″ W to lat. 47°30′00″ N., long. 114°54′23″ W.; thence to point of origin; excluding Kalispell/Glacier Park International Airport Class D airspace, Class E2 airspace, and that airspace within Federal Airways airspace area.

* * * * *

Issued in Seattle, Washington, on October 2, 2003.

John L. Pipes,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–26560 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 031003247–3247–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To

help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 21, 2003.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Alternatively, comments may be e-mailed to Sheila Quarterman at *SQuarter@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Industry and Security, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/news/2003/ForeignPolicyReport/Default.htm* and copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION: The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items and activities including: high performance computers (§ 742.12); certain general purpose microprocessors for ''military end-uses'' and ''military end-users'' (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.3, 746.4, and 746.7); specified items intended for Libyan aircraft (§ 744.8); certain entities in Russia (§ 744.10); and individual terrorists and terrorist organizations (§§ 744.12, 744.13 and § 744.14). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2003, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade, either at the firm level or at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's Web site (which can be reached through *http://www.bis.doc.gov).* If requesters cannot access BIS's Web site, please call the number above for assistance.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 03–26564 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–33–P

POSTAL SERVICE

39 CFR Part 111

Sender-Identified Mail: Enhanced Requirement for Discount Rate Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the *Domestic Mail Manual* (DMM) to require enhanced sender identification for all discount rate mailings.

DATES: Submit comments on or before November 20, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joel Walker, Mailing Standards, United States Postal Service, (703) 292–3648.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing this enhanced requirement because sender identification of all discount rate mailings would serve as a tool in identifying the senders of a large portion of the mailstream. It could also facilitate investigations into the origin of suspicious mail.

As background, two congressional committees urged the Postal Service to explore the concept of sender identification, including ''the feasibility of using unique, traceable identifiers applied by the creator of the mail piece.'' S. Rept. 107–212, p. 50; see also H. Rept. 107–575, p. 46. The President's Commission on the United States Postal Service recently recommended the use of sender identification for every piece of mail. ''Embracing the Future,'' Report of the President's Commission on the United States Postal Service (July 31, 2003) pp. 147–8. Requiring sender-identification for discount rate mail is an initial step on the road to intelligent mail.

It should be noted that the pieces in most discount rate mailings already bear some evidence of the identity of the sender. The sender's identity usually can be determined via the postage payment method used by the mailer, since all discount rate mailings must have postage paid using permit imprints, precanceled stamps, or meter postage.

Except for a company permit imprint format, mailers who pay postage using regular permit imprints must display an indicia on each mailpiece that shows the permit imprint number and the city and state where the permit is held. Mailpieces bearing a company permit imprint (which do not require the indicia to show the permit imprint number and the city and state of issue) must display the sender's domestic return address on each mailpiece as stated in current DMM A010.4.3. Mailers who pay postage on their discount rate mailings using precanceled stamps also are required to display the sender's domestic return address on each mailpiece. For discount rate mailings that bear meter postage, the meter imprint or indicia on each mailpiece must contain information that can be used to identify the name and address of the meter license holder.

In this proposed rule, the Postal Service seeks to enhance mail security by requiring that all discount mail be ''sender identified.'' Specifically, the Postal Service proposes revisions to the mailing standards in DMM E050, E110, E211, E610, and E710. The revision to DMM E050 would state that franked mail sent at discount rates would be considered sender-identified mail. The revisions to DMM E110, E211, E610, and E710 would require all discount rate mailings to meet a sender-identification requirement. Since many discount rate mailings already meet this requirement, the Postal Service proposal would have little impact on most discount rate mailers. However, it is likely that some discount rate mailers may need to change their current procedures to comply with the proposed sender-identification requirement. If the requirement is adopted, its effect would be slightly tighter requirements for identifying the sender of a discount rate mailing.

The proposed rule would further enhance existing requirements by specifically requiring that all discount rate mailings allow a reasonable means for identifying the sender of a mailpiece sent at a discount postage rate.

Under this proposal, sender-identified mail would include all mailpieces that are part of a First-Class Mail, Periodicals, Standard Mail, or Package Services mailing that is eligible for and claims any discounted postage rate. To be considered as sender-identified, each discount rate mailpiece would be required to meet one of the following requirements:

- Postage paid using a permit imprint or metered postage: If the permit imprint permit or meter license is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

(a) Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

(b) The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be

retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

• Postage paid using precanceled stamps: Each mailpiece must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder, the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E Eligibility

E000 Special Eligibility Standards

* * * * *

E050 Official Mail (Franked)

1.0 BASIC INFORMATION

* * * * *

[Add new 1.8 specifying that franked mail meets the sender-identified requirement, to read as follows:]

1.8 Sender-Identified Mail Requirement

Placement of the written or printed facsimile signature or other markings specified in Exhibit 1.1 meets the sender-identified requirement for discount rate franked mailings made under E100, E600, and E700.

* * * * *

E100 First-Class Mail

E110 Basic Standards

* * * * *

[Renumber current 4.0 and 5.0 as new 5.0 and 6.0, respectively. Add new 4.0 to state the new requirements for sender-identified mail to read as follows:]

4.0 SENDER-IDENTIFIED MAIL

4.1 Requirement

To be eligible for any First-Class Mail discount postage rates under E130 or E140, all mailpieces must identify the sender. Postage must be paid using a permit imprint, meter, or precanceled stamp. Sender-identified mail must meet the requirements in 4.2, 4.3, or 4.4.

4.2 Permit Imprint Mailings

If the permit imprint appearing on discount rate First-Class Mail pieces is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

a. Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

b. The permit imprint holder must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

4.3 Precanceled Stamp Mailings

Each mailpiece bearing precanceled stamps and sent at a First-Class Mail discount postage rate must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

* * * * *

E200 Periodicals

E210 Basic Standards

E211 All Periodicals

* * * * *

[Renumber current 1.4 as 1.5. Add new 1.4 to state the new requirements for sender-identified mail read as follows:]

1.4 Sender-Identified Mail Requirement

To be eligible for any Periodicals discount postage rates under E217, E220, E230, E240, E250, E260, and E270, all mailpieces must identify the sender. A Periodicals publication that bears a properly prepared identification statement as required in E211 meets the sender-identified requirement.

* * * * *

E600 Standard Mail

E610 Basic Standards

[Renumber current 5.0 through 9.0 as 6.0 through 10.0 respectively. Add new 5.0 to state the new requirements for sender-identified mail to read as follows:]

5.0 SENDER-IDENTIFIED MAIL

5.1 Requirement

To be eligible for claiming any Standard Mail discount postage rates under E620, E630, E640, E650, and E670, all mailpieces must identify the sender. Postage must be paid using a permit imprint, meter, or precanceled stamp. Sender-identified mail must meet the requirements in 5.2 or 5.3.

5.2 Permit Imprint and Metered Mailings

If the permit imprint or meter indicia appearing on discount rate Standard Mail pieces is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

a. Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

b. The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

5.3 Precanceled Stamp Mailings

Each mailpiece bearing precanceled stamps and sent at a Standard Mail discount rate must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder, the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be

retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

* * * * *

E700 Package Services

E710 Basic Standards

* * * * *

[Renumber current 4.0 as 5.0. Add new 4.0 to state the new requirements for sender-identified mail to read as follows:]

4.0 SENDER-IDENTIFIED MAIL

4.1 Requirement

To be eligible for any Package Services discount postage rates under E712, E713, E714, E751, E752, and E753, all mailpieces must identify the sender. Postage must be paid using a permit imprint, meter, or precanceled stamp. Sender-identified mail must meet the requirements in 4.2 or 4.3.

4.2 Permit Imprint and Metered Mailings

If the permit imprint or meter indicia appearing on discount postage rate Package Services mailpieces is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

a. Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

b. The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

4.3 Precanceled Stamp Mailings

Each mailpiece bearing precanceled stamps and sent at a Package Services discount postage rate must bear a domestic return address. If the return address is not the address of the precanceled stamp permit holder, the party located at the return address shown on the mailpiece must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be retained for one year from the date of the mailing and must be made available to the U.S. Postal Inspection Service immediately upon request.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–26438 Filed 10–20–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–7576–6]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of Negotiated Rulemaking Committee on All Appropriate Inquiry.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of an upcoming meeting of the Negotiated Rulemaking Committee On All Appropriate Inquiry.

DATES: A meeting of the Negotiated Rulemaking Committee On All Appropriate Inquiry is scheduled for November 12 through November 14, 2003. The location for the meeting is provided below. Dates and locations of subsequent meetings will be announced in later notices.

ADDRESSES: The meeting will take place at the headquarters office of the National Association of Home Builders, 1201 15th Street, NW., Washington, DC 20005. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on each day.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov.* Information on the Negotiated Rulemaking Committee also can be found at *www.epa.gov/brownfields/regneg.htm.*

SUPPLEMENTARY INFORMATION: Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on November 12, 13, and 14, 2003, the Committee's agenda will include a continuation of substantive deliberations on the proposed rulemaking including discussions on recommendations for proposed regulatory language for addressing each of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii).

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on each day.

Dated: October 15, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 03–26542 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7576–8]

RIN 2060–AJ99

Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period.

SUMMARY: In this document, we are reopening the public comment period on the Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS or standard) that was published on June 2, 2003 (68 FR 32802) to solicit additional comment on alternative approaches for classifying ozone nonattainment areas, based on comments received during the comment period. The comment period on the proposed rule originally closed on August 1, 2003. Based on comments received on the proposed rule, we are reconsidering how to classify areas and are giving the public the opportunity to comment on two alternative strategies for classifying areas.

DATES: Comments must be received on or before November 5, 2003.

ADDRESSES: All comments should be submitted to Docket #OAR 2003–0079. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Comments can be submitted to the address above, by fax (202) 566–1741, or by e-mail to *A-and-R-Docket@epa.gov*. The voice telephone number is (202) 566–1742. In addition, we have placed a variety of materials regarding implementation options on the Web site: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr*. While this Web site is not an exact duplicate of the Air Docket, we have placed materials that we have generated and materials that have been submitted in an electronic format on the Web site. We request that comments be submitted by e-mail to facilitate expeditious distribution within EPA and placement on the Web site.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666 or by e-mail at: *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550 or by e-mail at: *gerth.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. 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 OAR 2003–0079. 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 Air and Radiation 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742).

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute and which, therefore, is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information

Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. 2003–0090. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov*, Attention Docket ID No. 2003–0090. In addition, in order to expedite this process, please also sent your comments to both *silvasi.john@epa.gov* and *gerth.denise@epa.gov*. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2 below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR 2003–0079.

3. By Hand Delivery or Courier. Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B102, Washington, DC 20004, Attention Docket ID No. OAR 2003–0079. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. By Facsimile. Fax your comments to: 202–566–1741, Attention Docket ID No. OAR 2003–0079.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On June 2, 2003 (68 FR 32802), we proposed options for implementing the 8-hour ozone NAAQS, including two different classification options. Classifications establish which requirements apply to individual nonattainment areas and the maximum timeframe for areas to attain. Option 1 would place all 8-hour ozone nonattainment areas into subpart 2 and would classify areas in accordance with table 1 in section 181 of the CAA as modified by EPA to reflect the 8-hour NAAQS. Option 2 would place areas that are designated nonattainment for the 8-hour ozone standard under subpart 1 or subpart 2 (of part D, title I) based on the area's 1-hour ozone design value. Areas placed under subpart 2 would be classified in accordance with table 1 in section 181 of the Clean Air Act (CAA) as modified by EPA to reflect the 8-hour NAAQS. (In general, subpart 1 contains less prescriptive requirements for air quality planning than does subpart 2.) We indicated a preference for classification option 2 because it would provide more flexibility to States and Tribes as they address their unique air quality problems.

We received many comments concerning the classification options we proposed. A number of commenters favored option 2, indicating that they believed it provided needed flexibility in implementing the standard. Other commenters favored option 1, indicating that they believed that the Supreme Court ruling established a preference for subpart 2 and, therefore, it was not appropriate to classify areas under subpart 1. Northeast States and some other States, as well as environmental organization commenters,[1] objected to allowing some areas to be subject to subpart 1, stating that the mandatory measures under subpart 2 helped reduce ozone concentrations and were a forcing function for more expeditious control. A number of other States outside the Northeast preferred that some areas be covered under subpart 1, because of the flexibility it provided to local areas to adopt controls that are appropriate for their area.

Several other commenters suggested new options or variants of option 2. There were two key concerns that seemed to be the basis for most of these comments. First, many commenters were concerned that under EPA's option 2, some areas classified under subpart 1 could have worse 8-hour air quality than areas classified under subpart 2.[2] Many of these commenters noted that it seemed inequitable to have areas with more significant air quality problems subject to less stringent planning obligations and more flexible attainment periods. Second, a number of commenters raised a concern that the distribution scheme under a modified Table 1 resulted in too many areas in the lower classifications. These commenters believed that the classification for many areas under this approach would not reflect the significance of the 8-hour ozone problem for these areas and therefore would not provide the appropriate amount of time needed for those areas to attain the standard.[3]

In considering the comments on this issue, we identified several suggestions that we believe deserve further consideration as they may address some of the above-noted concerns.[4] We are therefore re-opening the comment period for the limited purpose of accepting comment on the alternatives suggested in some of the comments. While we recognize that this action will delay by a brief period the issuance of the final rule to implement the 8-hour NAAQS, we believe that the comments

[1] *E.g.,* Clean Air Task Force, docket document OAR–2003–0079–0154; Environmental Defense, docket document OAR–2003–0079–0264, –0265, –0266; Massachusetts Department of Environmental Protection, docket document OAR–2003–0079–0267.

[2] *See e.g.,* Hunton and Williams LLP representing the Utility Air Regulatory Group (UARG), docket document OAR–2003–0079–0362; Northeast States for Coordinated Air Use Management, OAR–2003–0079–0315; Kansas City Power and Light (KCPL), docket document OAR–2003–0079–0185; FirstEnergy Corporation, docket document OAR–2003–0079–0218.

[3] *See e.g.,* South Coast Air Quality Management District, docket document OAR–2003–0079–0327; E.I. duPont de Nemours, Inc., docket document OAR–2003–0079–0246.

[4] We do not discuss all possible alternatives raised in the comments but rather the alternatives that we believe are most likely to improve the implementation framework.

submitted on classifications merit the consideration of new alternatives and the opportunity for the public to review and comment on these alternatives. Below, we provide a brief summary of several alternative approaches submitted in the comments and indicate the docket number of relevant comment documents so that any interested person can review those comments.[5] We then describe two specific approaches for incorporating some of these suggestions into a classification scheme for the 8-hour standard that, based on our initial review of the comments, seem the most promising for improving the implementation framework. While we are open to comment on any of the ideas suggested during the initial comment period, we are most interested in hearing comment on the concepts we have incorporated into the two alternative approaches we discuss below. We also provide comparisons of two alternatives with our previously proposed option 2 without the incentive feature. This does not imply that we have decided to not include the incentive feature, nor does it imply that we have decided not to adopt our proposed option 1. In addition, we may add to the docket additional material as it becomes available that relates to the two alternatives discussed below; readers should continue to check the electronic docket for any such material during the comment period.

Sequential Implementation. Several commenters contended that EPA does not have the authority to re-write the statute by modifying Table 1 in section 181(a) to reflect the 8-hour NAAQS (see *e.g.*, comments from Electronics Industries Alliance, docket document OAR–2003–0079–0156; and Advanced Micro Devices, Inc., docket document OAR–2003–0079–0139). These commenters suggested that EPA adopt a sequential implementation scheme under which areas that are meeting the 1-hour NAAQS but not the 8-hour NAAQS would be designated in April 2004 as not meeting the 8-hour NAAQS and begin implementation under subpart 1. Areas that are still violating the 1-hour NAAQS would continue to implement the 1-hour NAAQS under subpart 2 and would not be designated for the 8-hour NAAQS or begin implementing that standard until the area attains the 1-hour NAAQS. At the time an area is designated nonattainment for the 8-hour NAAQS, it would be classified under subpart 1 for that standard. Thus all areas would be classified under subpart 1 for the 8-hour NAAQS. This approach would eliminate the inequity issue by placing all 8-hour areas under subpart 1 and would allow more flexibility in setting attainment dates for areas although the maximum attainment period would be 10 years from designation. However, EPA believes that this approach conflicts with the Supreme Court's holding that the classification provisions of subpart 2 must apply for purposes of implementing the 8-hour NAAQS. See *Whitman* v. *ATA*, 121 S. Ct. 903, 917 (2001).

Use 8-hour design values exclusively under Option 2. Several commenters that supported option 2 recommended against using the 1-hour design value for determining which areas would be classified under subpart 1 and which would be classified under subpart 2. (*See e.g.*, UARG, docket document OAR–2003–0079–0362; Kansas City Power & Light, docket document OAR–2003–0079–0185; TXU Energy docket document OAR–2003–0079–0204.) These commenters suggested that it would be more logical and more consistent with the nature of the 8-hour standard for EPA instead to translate the lowest 1-hour design value threshold in Table 1 into an approximate 8-hour equivalent. (The original translation table we proposed appears at 68 FR 32812 (June 2, 2003).) They point to the record in the rulemaking which established the 8-hour NAAQS and suggest that the approximate 8-hour equivalent of the 0.12 ppm 1-hour NAAQS is 0.090 ppm. [*See,* for instance, statement in third column, section D of 62 FR 38858 (July 18, 1997).] They recommend that rather than translating the lower bound for marginal areas in Table 1 of section 181 to 0.080 ppm or 0.085 ppm, EPA should start it at 0.090 ppm or 0.091 ppm, which they believe reflects the 8-hour ''equivalent'' of the 1-hour NAAQS. Thus, this approach would result in 8-hour nonattainment areas with design values less than that lower bound being covered under subpart 1. This approach, unlike our June 2, 2003 proposal, would result in all subpart 1 areas having 8-hour design values (an indication of the magnitude of the ozone problem) that are lower than any area covered under subpart 2.

Place all areas with a design value equivalent to ''moderate'' under subpart 2. The American Lung Association (docket document OAR–2003–0079–0111) suggested that under Option 2, all areas with an 8-hour design value equivalent to moderate or above should be classified under subpart 2. Thus, an area that is meeting the 1-hour standard that would have been classified under subpart 1 under EPA's Option 2, based on its 8-hour design value, would instead be subject to subpart 2 if its 8-hour design value is equivalent to or greater than the design value for a moderate area under Table 1 of section 181 as modified to reflect 8-hour design values. This approach would eliminate much of the inequity that commenters believed could result if areas classified under subpart 1 have more significant 8-hour air quality problems than areas classified under subpart 2.

Establish classifications that better reflect an area's 8-hour problem. A variety of commenters were concerned that EPA's classification scheme places too many areas in the lower classifications.[6] The commenters stated that the classification options lead to classifications for some areas that do not reflect the significance of the 8-hour problem in those areas and do not reflect the time needed for those areas to attain. (*See, e.g.*, The American Petroleum Institute (API) docket document OAR–2003–0079–0281). They provided several suggestions for establishing a classification scheme that would classify areas in a way that better reflects their air quality problem. API provided 3 options while other commenters suggested alternatives similar to one or more of the alternatives suggested by API. (*See e.g.*, ExxonMobile Refining & Supply docket document OAR–2003–0079–0212; Clean Air Task Force[7] docket document OAR–2003–0079–0215; American Chemistry Council, docket document OAR–2003–0079–0217.)

API's suggested alternatives are as follows:

- Maintain a rebuttable presumption that an area's 1-hour classification would be retained under the 8-hour standard if the 1-hour classification was higher than the 8-hour classification.
- Translate the classification table using only one-half the percentage above the standard that each statutory classification threshold (or cutpoint) represents.[8] (These percentages are

[5] We do not attempt to cite to all comments which may have raised a specific alternative; rather we try to cite examples of comments in which the alternatives were discussed.

[6] This comment was raised with respect to both Option 1 and Option 2.

[7] Their rationale was that more areas should be placed in higher classifications to ensure that they implement the mandatory control measures contemplated by Congress and have a specified rate of reduction out to their attainment date. However, they believed our rule should require all 8-hour nonattainment areas to be covered under subpart 2.

[8] The rationale for the 50 percent adjustment was that the 8-hour standard is more stringent than the 1-hour standard and that past air quality trends showed that 8-hour average ozone concentrations declined over the past 20 years at about half the rate that 1-hour averages declined. Thus, we would expect attainment for areas with 8-hour values a

Continued

shown in Table 2 of the proposed rule, 68 FR at 32812, and were the basis for translating the 1-hour ozone values in Table 1 of section 181 of the CAA into 8-hour ozone values.) For further description, see p. 13 of docket document OAR–2003–0079–0281.

• Use a distribution of classifications that mirrors more closely the distribution of areas in the original 1991 classifications.

While each of these alternatives would result in more areas being placed in higher classifications, EPA believes that the second alternative would more likely result in classifications that better reflect an area's 8-hour ozone problem.

3. *Alternative approaches for comment.* Based on these comments, we are reopening the comment period for consideration of two alternative approaches for classifying areas. The first one, Alternative A, would translate the classification table to 8-hour values beginning with an 8-hour design value that, to the extent possible, would be equivalent to the 1-hour design value of 0.121 ppm. This could be the value suggested in the comment (0.091) or some other value determined upon further analysis to be equivalent. The EPA is in the process of conducting additional analysis and will be placing the results of that analysis in the docket within a week of publication of this notice, where it will be available to anyone interested in reviewing it. This approach could then be combined with the suggestion of translating the classification table for the remaining thresholds using one-half of the percentage above the standard which each of the classification thresholds represents. This alternative approach would address the two key concerns identified by many commenters: (1) Ensuring that areas classified under subpart 1 have a less significant ozone problem than areas classified under subpart 2; and (2) shifting areas subject to subpart 2 into higher classifications that better reflect their 8-hour problem and the time it will take them to attain.

The second alternative approach, Alternative B, would address the issues of equity between subpart 1 and subpart 2 areas with a structure that is closer to that of our June 2, 2003 proposal. In order to provide sufficient time for attainment, and similar to Alternative A above, we would reduce the range of design values that comprise a classification (*e.g.*, the range of design values for marginal areas under Table 1 of section 181 is 0.121 up to 0.138, the range for moderate areas is 0.138 up to 0.160 and so on). Under this modified option 2 approach—

• Areas with 1-hour ozone design values of 0.121 ppm or greater would be covered under subpart 2 and would be classified with a revised classification table reflecting the 8-hour ozone NAAQS and starting at 0.085 ppm. The range for each classification would be determined by using 50 percent of the range in Table 1 of section 181.[9]

• Areas meeting both of the following criteria would also be covered under subpart 2:

—1-hour design value less than 0.121 ppm and

—8-hour design value representing a classification threshold of areas that have relatively high magnitude of an 8-hour ozone problem, for example 0.091 ppm or greater. (0.091 is the lower threshold for moderate areas.)

• All other areas with a 1-hour design value of less than 0.121 ppm would be covered under subpart 1.

This approach would significantly reduce the number of areas under subpart 1 that have an 8-hour design value greater than an area under subpart 2, but not to the extent of Alternative A above. In addition, it would place several areas in higher classifications, better reflecting the areas' air quality problems and the time the areas need to attain the 8-hour standard.

Effects of Alternatives A and B

Table 1 below illustrates how a classification table (that would apply in place of Table 1 in section 181 of the CAA) could be structured for Alternatives A and B. Columns A through E appeared in the June 2, 2003 proposed rule. Column F presents 50 percent of the percentages of column D. Columns G and H present the classification thresholds that could apply for Alternatives A and B.

The June 2, 2003 proposed rule used hypothetical nonattainment areas for evaluation of different classification approaches. These were documented in the report cited in the June 2, 2003 notice [10] and relied on air quality data primarily from the 3-year period 1998 to 2000. To compare the effects of the differing alternatives, we have updated 8-hour design values based on air quality data from 2000 to 2002. We have developed a list of hypothetical areas using the 2000 to 2002 data following the same procedure for defining them as we did for the proposal.[11] The same cautionary statements that applied to the original list apply to this list.

Table 2 below provides a comparison between our proposed option 2 (without the incentive feature) (row A) and Alternatives A and B (rows B and C respectively); row D provides for reference the distribution of the original set of classifications of 1-hour nonattainment areas in 1991. It should be noted that under either alternative approach, compared with our June 2, 2003 preferred approach, fewer areas would be covered under subpart 1.

Other Possible Issues:

1-hour Threshold to Distinguish Between Subpart 1 and Subpart 2 Coverage

In our June 2, 2003, proposal, classification Option 2 relied on the lowest 1-hour design value in the Clean Air Act's classification table to

certain percentage above the standard to take relatively more time to attain the 8-hour standard than areas with 1-hour values the same percentage above the 1-hour standard would take to attain the 1-hour standard.

[9] In the June 2, 2003 proposal, we calculated the range for each classification using the following formula: ((the level of the 8-hour standard 0.08) + (0.08 × (the percent the 1-hour threshold is above the 1-hour standard of 0.12)/100). Rather than using this formula to see the bottom threshold for the marginal classification, we set the threshold at 0.085, which is the lowest design value of any area that would be designated nonattainment for the 8-hour standard. (See discussion at 68 FR 32812, middle column and footnote 1 to Table 2 on same page.) If we apply the same formula using 50 percent of the percentage that the 1-hour threshold is above the 1-hour standard, the range of the marginal classification would shrink to one value, viz., 0.085 ppm, with the lower threshold for the moderate classification being 0.086 ppm. We believe such a result is not consistent with Congressional intent since it would give the marginal classification little or no meaning. Thus, for purposes of this option, we believe it makes sense to use 0.085ppm (the minimum exceeding value of the 8-hour standard), rather than 0.08 ppm (the level of the standard) for the calculation. Therefore, we used the following formula for establishing the classification ranges for this approach: (0.085 + (0.085 × (0.5 × (the percent the 1-hour threshold is above the 1-hour standard of 0.12))/100). As an indication of the difference this makes, there would only be 1 marginal area with the lower threshold for moderate areas being 0.086 ppm, compared to 10 marginal areas with the revised method we employed, where 0.091 would be the lower threshold for moderate areas; see Tables 1 and 2 below, which are described in the next section.

[10] Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard. Illustrative Analysis Based on 1998–2000 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, April 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[11] REVISED: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard in Relation to Re-Opened Comment Period. Illustrative Analysis Based on 2000–2002 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, October 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

determine which areas were required to be covered under subpart 2, viz., 0.121 ppm. Under our long-standing rounding conventions, values between 0.121 and 0.124 inclusive round down to 0.12, which is not an exceedance of the 1-hour standard. Several commenters [12] noted that the 0.121 ppm value does not represent an exceedance of the 1-hour standard due to our rounding conventions. They recommend that 0.125 ppm (which rounds to 0.13 ppm, an exceedance) be adopted as the cutpoint for determining whether an area must be covered under subpart 2. The likely practical effect would be to place a few additional areas under subpart 1. We are soliciting comment on this suggestion.

Five Percent Adjustment Provision

If we change our classification scheme to have a narrower range for each classification, we may need to modify the provisions for the 5 percent ''reclassification'' feature of section 181(a)(4) to reflect that change. The apparent intent of Congress was to allow States to request a different classification if an area's design value was within 5 percent of a higher or lower classification threshold. That was based on the original threshold values, which were certain percentages above the level of the 1-hour standard. Our June 2, 2003 proposal would have retained the original percentages for the classification table based on 8-hour average design values. If we adopt a classification table based on lower percentages above the standard, the adjustment feature might have to be modified to keep the same relative ''window'' of adjustment. For instance, using 100 percent of the percentages between the 1-hour design value thresholds, we would use a 5 percent adjustment, but using only 50 percent of those percentages, we may want to use only a 2.5 percent adjustment, since the thresholds themselves are half as large.

Alternatives to a 50 Percent Adjustment

As noted above, one option for addressing concerns that our proposed option 2 may not have provided classifications high enough to provide adequate time for some areas to attain the 8-hour standard was to use only half (50 percent) of the percentages above the 1-hour standard calculated for each of the classification thresholds. The commenters' rationale for the 50 percent adjustment was that the 8-hour standard is more stringent than the 1-hour standard and that past air quality trends information provided by the commenter for 11 metropolitan areas showed that, on average, 8-hour average ozone concentrations declined over the 1998–2002 period at about half the rate that 1-hour averages declined. Thus, we would expect attainment for areas with 8-hour values a certain percentage above the standard to take relatively more time to attain the 8-hour standard than areas with 1-hour values the same percentage above the 1-hour standard would take to attain the 1-hour standard. However, we could use another appropriate percentage that may be based on how soon areas are expected to attain the 8-hour standard based on measures that are currently in effect or are scheduled to go into effect. EPA is soliciting comments on other possible adjustments that may place areas in classifications that better reflect their 8-hour air quality problem and the time needed to attain.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: October 15, 2003.

Elizabeth Craig,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—ALTERNATIVE CLASSIFICATIONS

[Table 1 of subpart 2 1-hour ozone classification table]

[Translation to 8-Hour Design Values]

Area class		CAA design value thresholds (1-hour ozone ppm)	Percent above 1-hour ozone NAAQS	Translated 8-hour design value thresholds (ppm ozone) using Col D (June 2, 2003 proposal)	50% of col. D	Translated 8-hour design value thresholds (ppm ozone) w/50% of Col D starting with 0.091 *	Translated 8-hour design value thresholds (ppm ozone) w/50% of Col D starting with 0.085 **
A	B	C	D	E	F	G	H
Marginal	from	0.121		0.085		0.091	0.085
	up to	0.138	15	0.092	7.5	0.097	0.091
Moderate	from	0.138	15	0.092	7.5	0.097	0.091
	up to	0.16	33.333	0.107	16.6665	0.105	0.099
Serious	from	0.16	33.333	0.107	16.6665	0.105	0.099
	up to	0.18	50	0.120	25	0.113	0.106
Severe-15	from	0.18	50	0.120	25	0.113	0.106
	up to	0.19	58.333	0.127	29.1665	0.116	0.110
Severe-17	from	0.19	58.333	0.127	29.1665	0.116	0.110
	up to	0.28	133.333	0.187	66.6665	0.150	0.142
Extreme	equal to or above.	0.28	133.333	0.187	66.6665	0.150	0.142

* 0.09 + (0.09 × (col F/100))

** 0.085 + (0.085 × (col F/100))

[12] *E.g.,* American Petroleum Institute, docket document OAR–2003–0079–0281; Michigan Chemistry Council, docket document OAR–2003–0079–0200.

TABLE 2.—CLASSIFICATION OPTIONS

[Counts of hypothetical nonattainment areas]

(2000–2002 data)

	Subpart 2						Subpart 1	
	Extreme	Severe-17	Severe-15	Serious	Moderate	Marginal		Total
Option 2 as proposed 6/2/03	0	1	0	4	21	11	64	101
Alternative A (8-hour-only design value option)	0	1	2	5	12	26	55	101
Alternative B (Modified Option 2)	0	3	4	9	30	10	45	101
Original 1991 Classifications*	1	5	7	13	30	43	2	101

*Does not account for section 185A or incomplete data areas

[FR Doc. 03–26537 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # OR–02–002b; FRL–7568–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Klamath Falls PM–10 Nonattainment Area Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Klamath Falls to EPA for approval and concurrently requested that EPA redesignate the Klamath Falls nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is proposing to approve the maintenance plan and to redesignate the Klamath Falls PM–10 nonattainment area to attainment.

DATES: Comments on this proposed rule must be received in writing by November 20, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle Washington 98101. Electronic comments should be sent either to *r10.aircom@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle WA 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–0782, or *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: September 24, 2003.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 03–26541 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262 and 271

[FRL–7575–8]

Massachusetts: Proposed Final Authorization of State Hazardous Waste Management Program Revisions; Proposed State-Specific Modification to Federal Hazardous Waste Regulations; Proposed Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action consists of three distinct but related proposals briefly characterized here and discussed in detail below in the supplementary information section of this action. First, the EPA proposes to grant final authorization to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revisions consist of updated State regulations covering hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. These State regulations are being updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990. These State regulations have been determined by the EPA to meet the requirements for authorization (including equivalency) as set forth in the EPA's current regulations.

Second, the State regulations submitted for authorization also include comprehensive regulations governing hazardous wastes being recycled on-site by generators. Although these State regulations differ in several respects

from the Federal regulations and do not meet particular requirements for State authorization currently set forth in the EPA's regulations, the EPA has determined that the State regulations meet the RCRA statutory test of protecting human health and the environment. These Massachusetts regulations are at least as environmentally protective overall as the Federal program. Accordingly, the EPA is proposing to make a State-specific modification to the Federal hazardous waste regulations to enable the EPA to authorize these Massachusetts regulations, pursuant to a proposal for flexibility submitted by the Massachusetts Department of Environmental Protection (MADEP) under the program established by the Joint EPA/State Agreement to Pursue Regulatory Innovation between the EPA and the Environmental Council of States (ECOS program). The EPA is also proposing (as part of this same rulemaking) to then authorize these Massachusetts hazardous waste recyclable materials regulations.

Third, the EPA is proposing to extend the expiration date of site-specific regulations previously adopted by the EPA under the eXcellence and Leadership program (Project XL) allowing alternative RCRA generator requirements to be followed for laboratories at certain universities in Massachusetts (and Vermont). The EPA is also proposing (as part of this same rulemaking) to then authorize the Massachusetts regulations which track these EPA regulations. The EPA already has authorized the Vermont regulations which track these EPA regulations and expects to extend the authorization of the Vermont regulations through a separate rulemaking.

DATES: Comments on the proposed rule must be received on or before November 20, 2003. Comments submitted electronically will be considered timely submitted if they are received by 11:59 p.m. (Eastern time) on the deadline date. Commenters may request a public hearing by November 4, 2003. *See* **SUPPLEMENTARY INFORMATION** below for additional details.

ADDRESSES: Written comments (including requests for hearings) should be mailed to Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, or e-mailed to: *biscaia.robin@epa.gov*.

Dockets containing copies of the Commonwealth of Massachusetts' revision application, the materials which the EPA used in evaluating the revision, and materials relating to the proposed State-specific and site-specific Federal regulation changes, have been established at the following two locations: (i) Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 292–5802; and (ii) EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours Monday through Thursday 10 a.m.—3 p.m., tel: (617) 918–1990. Records in these dockets are available for inspection and copying during normal business hours.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, tel: (617) 918–1642, e-mail: *biscaia.robin@epa.gov*.

SUPPLEMENTARY INFORMATION:

Additional comment and hearing information. Unless a hearing is scheduled, all comments must be submitted in writing, and must be received by the deadline set above. Commenters requesting a public hearing should specify the basis for their request. If the EPA determines pursuant to 40 CFR 25.4(d) that there is a sufficient reason to hold a public hearing, it will hold such a hearing prior to the close of the public comment period. The public comment period may then be extended to allow sufficient time to schedule and hold a hearing. If a public hearing is scheduled, the date, time and location will be available through a **Federal Register** notice, by contacting Ms. Robin Biscaia at the Region I office, and by individual notice to those persons on the mailing list of those interested in this matter. Persons wishing to be added to this mailing list should contact Ms. Robin Biscaia.

Introduction. In part I, below, this document will discuss the updated State RCRA regulations which are proposed to be authorized as a standard authorization under the current EPA regulations. In part II, below, this document will discuss the ECOS program proposal to make a State-specific change to the Federal regulations to allow authorization of the Massachusetts hazardous waste recyclable materials regulations, and the proposed resulting authorization of the recyclable materials regulations. In part III, below, this document will discuss the proposal to extend the expiration date of the New England Universities' Laboratories project XL regulations, and the proposed authorization of the Massachusetts project XL regulations. In part IV, below, this document will assess the effects of the proposed decisions, in accordance with various statutes and executive orders.

I. Proposed Final Authorization of State Hazardous Waste Management Program Revisions; Standard Authorization

A. Why Are Revisions to State Programs Necessary?

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Has Massachusetts Previously Been Authorized for Under RCRA?

The Commonwealth of Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management program. The authorized base program State regulations currently remain in effect and generally track Federal hazardous waste requirements through at least July 1, 1984. In addition, the EPA previously has authorized particular Massachusetts regulations which address several of the EPA requirements adopted after July 1, 1984. Specifically, on September 30, 1998, the EPA authorized Massachusetts to administer the Satellite Accumulation rule, effective November 30, 1998 (63 FR 52180). Also, on October 12, 1999, the EPA authorized Massachusetts to administer the Toxicity Characteristics rule (except with respect to Cathode Ray Tubes), and the Universal Waste rule, effective immediately (64 FR 55153). Finally, on November 15, 2000, the EPA granted interim authorization for Massachusetts to regulate Cathode Ray Tubes under the Toxicity Characteristics rule through January 1, 2003, effective immediately (65 FR 68915). This interim authorization subsequently was extended to run through January 1, 2006 (67 FR 66338, October 31, 2002).

C. What Decisions Is the EPA Proposing To Make in This Standard Authorization?

The EPA is proposing to authorize Massachusetts regulations which will update the State's hazardous waste program. The proposed State regulations cover hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. The State regulations are being updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990. The EPA is proposing to authorize these changes. In addition to addressing requirements in Checklists C1, C2 and C3 not previously covered by authorized State regulations, the proposed State regulations make some changes to the previously authorized Satellite Accumulation, Universal Waste rule and Toxicity Characteristics rule regulations. The EPA also is proposing to authorize these changes. In addition, the proposed State regulations include some State initiated changes to previously authorized Base Program regulations (*i.e.*, changes made for reasons other than addressing new EPA requirements). The EPA also is proposing to authorize these changes insofar as they address hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, and except as specified below. Finally, the proposed State regulations include provisions which track the 180 Day Accumulation Time rule for metal finishing industry waste water treatment sludges (F006) being recycled, adopted by the EPA on March 6, 2000 (65 FR 12397). The EPA also is proposing to authorize these provisions.

The specific RCRA program revisions for which the EPA proposes to authorize the Commonwealth of Massachusetts are listed in the table below. The Federal requirements in the table are identified by their checklist numbers and rule descriptions. The following abbreviation is used in defining analogous state authority: CMR = Code of Massachusetts Regulations. The citations in the table are to the CMR provisions as recently proposed to be adopted/amended by the MADEP in Massachusetts Register No. 983 (September 26, 2003). The EPA expects to authorize these provisions through a final Federal rule once they are adopted in final form by the MADEP through a final State rule, if the final State regulations are the same as the proposed State regulations. If the final State regulations are different from the proposed State regulations, the EPA expects to authorize them (without an additional round of public comment) if but only if the final regulations continue to meet standard authorization requirements and are a logical outgrowth of the proposed regulations.

Description of Federal requirements and checklist reference numbers	Analogous State authority
Consolidated Checklist 1 through July 1, 1990, covering base program requirements in 40 CFR part 260, and requirements in the following rule checklists included in part 260:	310 CMR 30.001–30.009; 30.010 (definitions), except for definitions relating to program elements not being authorized, namely ''mixed waste,'' ''municipal or industrial wastewater treatment facility permitted under M.G.L. c. 21, sec. 43'' and definitions relating to used oil program; 30.011–30.030.
(5) National Uniform Manifest (definitions), 49 FR 10490, 3/20/84;	
(11) Corrections to Test Methods Manual, 49 FR 47390, 12/4/84;	
(13) Definition of Solid Waste, 50 FR 14216, 4/11/85 as amended on 8/20/85 at 50 FR 33541 (except for variance authorities, 40 CFR 260.30 through 40 CFR 260.33);	
(23) Generators of 100 to 1000 kg Hazardous Waste (definitions), 51 FR 10146, 3/24/86;	
(24) Financial Responsibility; Settlement Agreement (definitions), 51 FR 16422, 5/2/86;	
(28) Standards for Hazardous Waste Storage and Treatment Tank Systems (definitions), 51 FR 25422, July 14, 1986 as amended on August 15, 1986 at 51 FR 29430;	
(35) Revised Manual SW–846, Amended Incorporation by Reference (definitions), 52 FR 8072–8073, March 16, 1987;	
(49) Identification and Listing of Hazardous Waste, Treatability Studies Sample Exemption (definition), 53 FR 27290, 7/19/88;	
(67) Testing and Monitoring Activities, 54 FR 40260, 9/29/89;	
(71) Mining Waste Exclusion II (definition), 55 FR 2322, 1/23/90.	

Description of Federal requirements and checklist reference numbers	Analogous State authority
Consolidated Checklist 2 through July 1, 1990, covering base program requirements in 40 CFR part 261 and requirements in the following rule checklists included in part 261: (4) Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 5308, 2/10/84; (7) Warfarin and Zinc Phosphide Listing, 49 FR 19922, 5/10/84; (8) Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, 6/5/84; (9) Household Waste, 49 FR 44978, 11/13/84; (13) Definition of Solid Waste, 50 FR 614,1/4/85 as amended 4/11/85 at 50 FR 14216 and 8/20/85 at 50 FR 33541; (14) Dioxin Waste Listing and Management Standards, 50 FR 1978, 1/14/85; (17C) HSWA Codification Rule—Household Waste, 50 FR 28702, 7/15/85; (17J) HSWA Codification Rule—Cement Kilns, 50 FR 28702, 7/15/85; (18) Listing of TDI, TDA, DNT, 50 FR 42936, 10/23/85; (20) Listing of Spent Solvents, 50 FR 53315, 12/31/85 as amended on 1/21/86 at 51 FR 2702; (21) Listing of EDB Waste, 51 FR 5327, 2/13/86; (22) Listing of Four Spent Solvents, 51 FR 6537, 2/25/86; (23) Generators of 100 to 1000 kg hazardous waste, 51 FR 10146, 3/24/86; (26) Listing of Spent Pickle Liquor, 51 FR 19320, 5/28/86 amended on 9/22/86 by 51 FR 33612 and on 8/3/87 by 52 FR 28697; (28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 as amended on 8/15/86 at 51 FR 29430; (29) Correction to Listing of Commercial Chemical Products and Appendix VIII, 51 FR 28296, 8/6/86 (superseded by Checklist 46, see below); (31) Exports of Hazardous Waste, 51 FR 28664, 8/8/86; (33) Listing of EBDC, 51 FR 37725, 10/24/86; (37) Definition of Solid Waste, Technical Correction, 52 FR 21306, 6/5/87; (41) Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87; (46) Technical Correction, Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88; (47) Identification and Listing of Hazardous Waste, Technical Correction (corrects CL 23); (49) Identification and Listing of Hazardous Waste, Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88; (53) Identification and Listing of Hazardous Waste, and Designation, Reportable Quantities, and Notification, 53 FR 35412, 9/13/88; (56) Identification and Listing of Hazardous Waste, Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, 10/31/88; (57) Identification and Listing of Hazardous Waste, Removal of Strontium Sulfide from the List of Hazardous Wastes, 53 FR 43881, 10/31/88; (65) Mining Waste Exclusion I, 54 FR 36592,9/1/89; (67) Testing and Monitoring Activities, 54 FR 40260, 9/29/89; (68) Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89; (69) Reportable Quantity Adjustment, 54 FR 50968, 12/11/89; (71) Mining Waste Exclusion II, 55 FR 2322, 1/23/90; (72) Modifications of F019 Listing, 55 FR 5340, 2/14/90; (73) Testing and Monitoring Activities, Technical Corrections, 55 FR 8948, 3/9/90; (75) Listing of 1,1-Dimethylhydrazine Production Wastes, 55 FR 18496, 5/2/90; (76) Criteria for Listing Toxic Wastes, technical amendment, 55 FR 18726, 5/4/90.	310 CMR 30.101–30.103; 30.104 (exemptions), except for 30.104(3)(d) (research study samples); 30.105–30.162; 30.353 (rules for very small quantity generators, being authorized in place of EPA conditional exemption in 40 CFR 261.5).

Description of Federal requirements and checklist reference numbers	Analogous State authority
Consolidated Checklist 3 through July 1, 1990, covering base program requirements in 40 CFR part 262 and requirements in the following rule checklists included in part 262: (1) Biennial Report, 48 FR 3977, 1/28/83; (5) National Uniform Manifest, 49 FR 10490, 3/20/84; (17D) HSWA Codification Rule, Waste Minimization, 50 FR 28702, 7/15/85; (23) Generators of 100 to 1000 kg Hazardous Waste, 51 FR 10146, 3/24/86; (28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 as amended on 8/15/86 at 51 FR 29430; (31) Exports of Hazardous Waste, 51 FR 28664, 8/8/86; (32) Standards for Generators, Waste Minimization Certifications, 51 FR 35190, 10/1/86; (42) Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87; (48) Farmer Exemptions, Technical Corrections, 53 FR 27164, 7/19/88; (58) Standards for Generators of Hazardous Waste, Manifest Renewal, 53 FR 45089, 11/8/88; (71) Mining Waste Exclusion II, 55 FR 2322, as described in Part III 1/23/90	310 CMR 30.301–30.352 (rules for large and small quantitygenerators); revisions to 30.685(1) (referenced by generator regulations); 30.361 (international shipments); 30.061–30.064 (generator notifications/i.d. numbers). **Note:** The Massachusetts ''Class A'' recycling regulations regarding generators doing on-site recycling also will be authorized, as described in Part II of this document. Special rules for certain university laboratories covered by the New England Universities' Laboratories XL project also will be authorized, as described in Part III of this document.
RCRA Cluster X:	
(184) Accumulation Time for Waste Water Treatment Sludges, 65 FR 12378, 3/8/00.	310 CMR 30.340(5).
Revisions to Previously Authorized Rules:	
(12) Satellite Accumulation Rule, 49 FR 49568, 12/20/84;	310 CMR 30.340(6), 30.351(5), 30.351(2)(b)(6.) and 30.353(2)(b)(6.).310 CMR 30.155 and 30.012 (updated incorporation by reference).
(119) Toxicity Characteristics Revision, TCLP Correction, 57 FR 55114, 11/24/92 as amended on 2/2/93 at 58 FR 6854.	
(142) Universal Waste Rule, 60 FR 25492, 5/11/95.	310 CMR 30.1034(5)(c)(1.)(c.) (revised cross-reference).

Following review of the proposed Massachusetts regulations, the EPA has determined that they are equivalent to, no less stringent than and consistent with the Federal program. The reasons for these determinations are set forth in the Administrative Docket, which is available for public review. Many of the proposed State regulations track Federal requirements virtually identically. Others differ from the Federal regulations in particular details, but have been determined by the EPA to be equivalent to the Federal regulations in providing the same (or greater) overall level of environmental protection with respect to each Federal requirement. The resolution of various issues relating to the proposed State regulations is recorded in an EPA Memorandum dated February 14, 2003 entitled ''Comments on Proposed Massachusetts RCRA Regulations'' and an EPA Memorandum dated March 31, 2003 entitled ''Resolution of Issues Regarding Proposed Massachusetts RCRA Regulations.''

Future updates of the State's regulations will need to address requirements covered by Checklists C1 through C3 adopted after July 1, 1990 and requirements covered by Checklists C4 through C10 adopted since July 1, 1984. The EPA has not reviewed and is not currently proposing to authorize changes the State may have made to Base Program regulations relating to Checklists C4—C10. (Note, Checklists C4 through C10 address EPA provisions found in 40 CFR parts 263, 264, 265, 266, 268, 270, 124 and 279). Also not covered in the current proposed authorization are some rules issued by the EPA before July 1, 1990 which apply in part to generators, namely the 1986 Radioactive Mixed Waste rule/interpretation, the various rules relating to Land Disposal Restrictions (''LDRs''), and the 1990 Organics Air Emissions rule (''AA'' and ''BB'' rule). Also not covered in the current proposed authorization are sector-specific rules that the MADEP has adopted for printers, photo processors and dry cleaners under its Environmental Results Program (''ERP''). Although many sources in these sectors are subject to RCRA requirements, the MADEP has advised the EPA that the ERP regulations have not made any changes to the hazardous waste management requirements applicable to these sectors, and has not submitted the ERP regulations for authorization at this time. Also not covered in the current proposed authorization is the proposed State regulation at 310 CMR 30.104(3)(d) relating to research facilities. That proposed regulation relates to an exemption from full Treatment, Storage, Disposal Facility (''TSDF'') requirements found at 310 CMR 30.864. The EPA will review that research facility provision (and the related exemption) when the MADEP submits updated regulations for TSDFs (Consolidated Checklists C5, C6 and C9). Also not covered in the current proposed authorization is the proposed State definition of ''municipal or industrial wastewater treatment facility permitted under M.G.L. c. 21, sec. 43'' in 310 CMR 30.010. That proposed definition relates to an exemption from full TSDF requirements found at 310 CMR 30.801(4). The EPA will review this definition (and the related exemption) when the MADEP submits updated regulations for TSDFs.

D. Where Are the Proposed State Rules Different From the Federal Rules?

The most significant differences between the proposed State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the Massachusetts program which are more stringent than the Federal program. All of these more stringent requirements are or will become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following:

• Massachusetts does not follow the EPA interpretation allowing Large Quantity Generators and Small Quantity Generators to conduct treatment without permits in accumulation tanks and containers.

• Massachusetts imposes various requirements regarding storage of hazardous wastes by generators which are more stringent than Federal requirements. For example, Massachusetts requires that labels on tanks and containers include identification of the hazardous wastes and the type of hazards associated with the wastes, as well as tracking the Federal requirement that the labels include the words ''hazardous waste.''

• In addition, Massachusetts specifies recordkeeping requirements to document compliance with requirements in some circumstances where the recordkeeping is not expressly required under the Federal regulations, *e.g.*, the keeping of an inspection log for container area inspections.

• Massachusetts imposes spill containment requirements for container areas (not just for tanks as in the Federal regulations), including a requirement that indoor containers be located on an impervious base and a requirement that outdoor containers have full secondary containment.

• Massachusetts requires security measures and posting of signs at hazardous waste storage areas, in addition to the labeling of individual tanks and containers as required by the Federal regulations.

• Massachusetts does not allow any storage of hazardous wastes in open tanks, whereas the Federal regulations allow such storage except when otherwise required by the 40 CFR parts 264 and 265, subpart CC hazardous air emission rules.

• Massachusetts specifies requirements for Very Small Quantity Generators (''VSQGs'') (Federal Conditionally Exempt Small Quantity Generators) which go beyond the Federal requirements for conditional exemption. For example, Massachusetts specifies safe storage practices for VSQGs whereas the Federal regulations regarding tank and container storage apply only to Large Quantity Generators (''LQGs'') and Small Quantity Generators (''SQGs'').

• In addition, Massachusetts prohibits VSQGs from generating or accumulating any acutely hazardous wastes, whereas the Federal regulations allow such generators to accumulate up to one kilogram of such wastes.

• Finally, VSQG hazardous wastes may be sent to municipal solid waste landfills under the Federal program but not under the Massachusetts program.

2. Broader in Scope Provisions

There also are aspects of the Massachusetts program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources within Massachusetts. These broader in scope requirements include the following:

• As further discussed in part II, below, Massachusetts designates and regulates as hazardous many recyclable materials not regulated as hazardous wastes under the Federal RCRA program, in addition to regulating those hazardous recyclable materials that are regulated as hazardous wastes in the Federal program.

• Massachusetts regulates both Centers and Events which collect household hazardous wastes and VSQG hazardous wastes. In contrast, household hazardous wastes are not regulated as hazardous wastes under the Federal program even when collected at centers and events. In addition, under the Federal regulations, VSQG hazardous wastes may be sent to facilities authorized by the State to manage such wastes, but there are no Federal regulations specifying the standards to be followed at facilities which are centers and events.

3. Different but Equivalent Provisions

As noted in part I.C. above, there also are various Massachusetts regulations which differ from but have been determined to be equivalent to the Federal regulations. These State regulations which are different from but equivalent to the Federal regulations are or will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include the following:

• The Massachusetts regulations regarding satellite storage allow more than one container in a satellite area (so long as there is only one container per waste stream) whereas the Federal regulations contemplate that there will be only one 55 gallon container in each satellite area. Unlike the Federal regulations, however, the State regulations impose requirements to ensure that multiple containers will be stored safely, including aisle spacing requirements, requirements for separation of containers with incompatible wastes and formal inspection requirements.

• The Massachusetts satellite storage regulations require containers to be moved from satellite areas to central storage areas within three days of a container being filled (whereas this three-day period begins to run under the Federal regulations only when more than 55 gallons has been accumulated in the satellite area), but the Massachusetts regulations also provide that the time allowed for storage in the central storage areas begins to run only when the container is moved to the central storage area or no later than three days after the container is filled. In contrast, under the Federal regulations, the time allowed for storage in central storage areas begins to run as soon as the container is required to be moved (*i.e.*, at the beginning of the three-day period).

• The Massachusetts regulations specify that while hazardous wastes placed into satellite storage must be counted when determining a generator's rate of generation, they need not be counted when determining the amount of hazardous waste stored on site (for purposes of determining whether a generator is a LQG, SQG or VSQG). In contrast, under the Federal regulations, wastes in satellite storage are counted both when determining a generator's rate of generation and when determining the amount of hazardous waste stored on site.

• The Massachusetts regulations contain the same exemption from hazardous waste requirements for certain chromium wastes as is found in the Federal regulations at 40 CFR 261.4(b)(6). However, under the EPA regulation, a generator seeking to claim the exemption for other than specifically listed waste streams must petition the EPA and obtain a determination that its particular wastes are exempt. In contrast, Massachusetts is proposing to allow a generator to make this determination for itself provided that the generator documents compliance with the criteria listed in the State (and Federal) regulations. Of course, a generator is responsible for making the correct determination, and the EPA encourages generators who

have any questions to seek guidance from the MADEP or EPA. Also, an exemption determination made by a generator under the Massachusetts regulations will apply only within Massachusetts. Petitions will need to be filed with any other authorized State to which shipments are made, or with the EPA if shipments are made to a non-authorized State.

• The Massachusetts regulations contain conditional exemptions for bulk scrap metal items as well as smaller particle scrap metal items being recycled, for whole used circuit boards as well as shredded circuit boards being recycled and for certain mixtures of water and unused gasoline being recycled. The Federal regulations similarly exempt these materials, but under sometimes different categories (*e.g.*, whole used circuit boards under the scrap metal category, certain mixtures of water and unused gasoline under the commercial chemical products category).

• Massachusetts allows VSQGs to conduct certain kinds of treatment on site without a permit. The exemption is limited to non-thermal treatment (typically neutralization) of wastes generated on site and is subject to a requirement that the treatment be conducted safely. The Massachusetts program operates somewhat similarly to the EPA interpretation allowing certain kinds of treatment in accumulation tanks and containers without permits, by LQGs and SQGs. However, Massachusetts allows treatment without permits only by VSQGs, whereas the EPA interpretation instead allows it by LQGs and SQGs. Also, the EPA interpretation allows treatment only within accumulation tanks and containers, whereas the Massachusetts regulation allows treatment in non-accumulation containers (*e.g.*, laboratory containers) at the site where the waste was generated, provided of course that this can be done safely.

• The Massachusetts regulations require that secondary containment systems for outdoor above-ground tanks must have a capacity at least equal to 110% of the volume of the largest tank. This requirement is designed to take the place of the Federal requirement (in 40 CFR 265.193(e)) that such containment systems must have a capacity at least equal to 100% of the volume of the largest tank plus sufficient capacity to contain precipitation from a 25 year, 24 hour storm. The Massachusetts regulations generally track the Federal requirements regarding secondary containment requirements for underground tanks. The Massachusetts regulations are being amended to require secondary containment for indoor above-ground tanks with a capacity at least equal to 100% of the volume of the largest tank (the Federal standard).

• The Massachusetts regulations specify standards for when tanks will be considered ''empty.'' The EPA regulations specify such standards only for containers, while specifying that tanks must be decontaminated before being disposed or reused. It should be noted that the State's empty tank standard for non-acute wastes is more stringent than the State (and Federal) empty container standard, *i.e.*, it does not allow waste residues to be left in tanks. The State standards will operate similarly to the tank decontamination requirement in the Federal regulations, but the State regulations clarify that generators may be able to determine that tanks are ''empty'' based on knowledge of the waste (*e.g.*, knowledge that there has been appropriate thorough cleaning of the tanks), without needing to do TCLP testing in every case.

E. What Will Be the Effect of the Proposed Authorization Decision?

The effect of the proposed authorization decision will be that entities in Massachusetts subject to RCRA will need to comply with the authorized State requirements instead of the Federal requirements, with respect to the matters covered by the authorized State requirements, in order to comply with RCRA. However, until the authorized Massachusetts program is brought fully up to date, there will continue to be a dual state/Federal RCRA program in Massachusetts. RCRA was amended by the Hazardous and Solid Waste Amendments (''HSWA'') in 1984. Section 3006(g) of RCRA, 42 U.S.C. 6906(g), provides that when the EPA promulgates new regulatory requirements pursuant to HSWA, the EPA shall directly carry out these requirements in states authorized to administer the underlying hazardous waste program, until the states are authorized to administer these new requirements. The EPA has established various new regulatory requirements pursuant to HSWA which have not yet been authorized to be administered by Massachusetts. There also are various self-implementing requirements directly established by the HSWA statutory amendments themselves. Regulated entities must comply with these HSWA requirements as set out in the Federal regulations and statute in addition to authorized State program requirements. The HSWA requirements that will continue to be administered by the EPA in Massachusetts include all of the Land Disposal Restriction (''LDR'') requirements set out in 40 CFR part 268 (including requirements adopted prior to July 1, 1990), the Corrective Action requirements referenced in 40 CFR 264.101, and the hazardous air emission standards set out in 40 CFR parts 264 and 265, subparts AA, BB and CC. A complete list of HSWA requirements is set out in 40 CFR 271.1, Tables 1 and 2.

With respect to TSDF permitting, Massachusetts will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits it has issued. The EPA also will continue to issue permits or portions of permits covering HSWA requirements for which Massachusetts is not authorized. In addition, the EPA will continue to implement the provisions of 40 CFR 264.1(f)(2) within Massachusetts. That provision specifies that TSDFs must comply with any standards promulgated by the EPA (HSWA or non-HSWA) after a State is authorized, until the State obtains authorization to issue permits covering such newly promulgated standards. The major effect of this provision in Massachusetts is that the EPA will remain responsible for issuing permits for Miscellaneous Units, since the EPA promulgated the Miscellaneous Unit standards in 40 CFR part 264, subpart X after the initial authorization of the Massachusetts base program, and since Massachusetts has not yet applied for and is not now being authorized to carry out these requirements.

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Wampanoag tribe). The proposed action will have no effect on Indian country. The EPA will continue to implement and administer the RCRA program in these lands.

The EPA is proposing to authorize but not codify the enumerated revisions to the Massachusetts program. Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart W for the codification of the Massachusetts' program until a later date.

II. Proposed State-Specific Modification to Federal Hazardous Waste Regulations, Pursuant to ECOS Program Proposal, To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Proposed Resulting Authorization of Massachusetts Recyclable Materials Regulations

A. What Massachusetts Regulations Are Proposed To Be Authorized?

In 1986, the MADEP adopted regulations to comprehensively regulate hazardous recyclable materials, under provisions separate from those governing hazardous wastes planned to be disposed. These regulations are found in 310 CMR 30.200. In the Federal RCRA program, some hazardous recyclable materials are not considered to be hazardous wastes and thus are exempt from hazardous waste regulation (*e.g.*, sludges and byproducts exhibiting a characteristic of hazardous waste and being reclaimed) whereas other hazardous recyclable materials are considered to be hazardous wastes and are subject to regulation including all of the usually applicable hazardous waste generator regulations (*e.g.*, spent materials, listed sludges and listed byproducts being reclaimed). In contrast, the State regulations cover virtually all hazardous recyclable materials under some level of regulation. However, based on the perceived level of risk, different recyclable materials are subject to different levels of regulation, from the least regulated Class A to the most regulated Class C.

Initially, the State's Class A regulations applied only to recyclable materials that are exempt from Federal regulation. Thus the State was not required to seek Federal authorization for these regulations. In 1995, however, the MADEP expanded the Class A category to include many recyclable materials that are recycled at the site of generation. Under the State regulations, these Class A recyclable materials must be recycled in a recycling system that is completely enclosed, but may be stored in tanks or containers prior to being recycled, without the entire storage to recycling process being completely enclosed. Thus the Class A regulations now apply to certain federally regulated hazardous wastes that are recycled on site by generators, namely those hazardous recyclable materials that are spent materials, listed sludges and listed byproducts, that are accumulated or stored on site before being recycled, and that are recycled through a process that does not meet all of the conditions for Federal exemption as a completely enclosed recycling process set out in 40 CFR 261.4(a)(8). In particular, the Class A regulations apply to Federally regulated recyclable materials currently being stored by about 136 generators with stand alone solvent stills/distillation units and to Federally regulated recyclable materials currently being stored by about 40 generators with stand alone silver recovery units.

The EPA is proposing to authorize the State's Class A regulations insofar as they apply to the storage of recyclable materials by generators with stand alone solvent stills/distillation units, generators with stand alone silver recovery units, and any other generators who may store Federally regulated recyclable materials subject to the Class A regulations in the future (*i.e.,* generators referenced by 310 CMR 30.212(10)). Once authorized, the Class A regulations will become part of the federally approved and enforceable State base program generator requirements.

It should be noted that the State is in the process of revising its Class A regulations (as part of its current update), and it is the proposed revised Class A regulations which the EPA is proposing to authorize. The EPA expects to authorize the final State regulations, once they are adopted, if they are the same as the proposed State regulations. If the final State regulations are different from the proposed State regulations, the EPA expects to authorize them (without an additional round of public comment) if but only if the final regulations continue to meet the RCRA statutory requirements and are a logical outgrowth of the proposed regulations.

The proposed authorization does not cover the Class A regulations insofar as they apply to the Federally exempt recyclable materials referenced by 310 CMR 30.212(1) through (7), as the regulation of these recyclable materials is beyond the scope of the Federal RCRA program. The authorization also will not cover the Class A regulations insofar as they apply to waste oil and specification used fuel oil as referenced by 310 CMR 30.212(8)–(9), since the MADEP has not yet applied to be authorized for the Federal RCRA Used Oil program (established in 40 CFR part 279). Finally, the authorization will not cover the State's Class B and Class C regulations, since the MADEP has not yet applied to be authorized for these regulations (which generally relate to off-site non-generator recycling).

B. Why Is the EPA Proposing To Make a Federal Regulation Change?

The EPA has reviewed the Massachusetts Class A regulations and determined that they do not meet particular requirements for State authorization set out in the current EPA regulations. However, the EPA also has determined that the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment and are at least as environmentally protective overall as the Federal program. Thus the EPA is proposing to make a State-specific Federal regulation change to allow authorization of the Massachusetts Class A regulations.

1. Differences in the State Class A Regulations Which Preclude a Standard Authorization

In comparison with the EPA regulations applicable to storage of hazardous wastes by generators, the Class A regulations regarding storage of hazardous recyclable materials by generators differ with respect to various details. For example, under the Federal regulations, storage of hazardous wastes without TSDF permits by LQGs and SQGs generally is limited to 90 and 180 days, respectively. In contrast, the Class A regulations allow recyclable materials to be stored pending recycling so long as there is no ''speculative accumulation.'' This typically allows storage times without TSDF permits of a year or longer. The EPA regulations on State authorization specify that, ''[s]tate law must require [TSDF] permits for owners and operators of all hazardous waste management facilities required to obtain permits under 40 CFR part 270 * * *'' 40 CFR 271.13(a). By allowing generator storage times without TSDF permits longer than the Federal regulations, the Class A regulations do not comply with this current EPA requirement for State authorization.

In addition, the Class A regulations impose requirements regarding storage of recyclable materials by generators which are quite different from the Federal regulations in 40 CFR part 262 regarding generator storage. In place of the Federal categories of LQG, SQG and CESQG (Massachusetts VSQG), the Class A regulations establish a dual status system. Generators are classified as LQGs or SQGs or VSQGs with respect to wastes to be shipped off-site based on the amount of such wastes to be shipped off-site. Generators are separately classified and regulated with respect to Class A recyclable materials based on the amounts of such materials (and are placed in either a merged LQG/SQG category or a VSQG category for that purpose). The resulting differences between the State and Federal regulations are fully described in a EPA memorandum dated July 8, 2002,

entitled ''Massachusetts RCRA Program Update: Issues Regarding Regulation of Recyclable Materials Reclaimed by Generators on Site.'' The differences include that the State does not count Class A recyclable materials in determining generator status (for wastes to be shipped off-site), resulting in some sources which would be LQGs under the Federal program instead being regulated in a lesser-regulated generator category. In addition, for sources which remain LQGs (notwithstanding the difference regarding counting), the usual LQG requirements regarding contingency planning and training do not apply to the parts of the generator's site handling the Class A hazardous recyclable materials. Rather, with respect to these recyclable materials, such generators are instead subject to the less formal and detailed Class A requirements regarding emergency planning and training.

The EPA is committed to reexamining the extent of flexibility that should be employed when reviewing State RCRA programs. In connection with another part of Massachusetts' ECOS program proposal, the EPA is creating a Work Group of EPA and State personnel to examine authorization issues. Without waiting for the results of this effort, the EPA nevertheless has employed some flexibility consistent with its current regulations in reviewing the Massachusetts RCRA program update, as indicated by its proposed approval of some Massachusetts provisions which differ from Federal provisions, discussed in part I.D. above. However, the differences between the Massachusetts Class A regulations and the EPA generator storage regulations are greater than those discussed in part I.D., and a standard authorization of the Class A regulations is precluded under the current EPA State authorization regulations by, for example, the difference regarding when TSDF permits are required. Thus the EPA is not proposing to approve the Massachusetts Class A regulations as a standard authorization.

2. Justification for Making a Change To the Federal Regulations To Allow the Authorization

The EPA is persuaded that it should make a State-specific regulation change to its Federal regulations to enable the authorization of the Class A regulations. The Massachusetts program comprehensively regulates hazardous wastes that are recycled on site by generators, and has operated successfully for many years. The State regulations contain incentives that encourage recycling (*e.g.*, lower fees for generators which recycle). In its ECOS project application, the MADEP reported that as of 1999, over 490,000 tons of wastes were recycled under its program, as opposed to 90,000 tons of hazardous wastes that were disposed. Basic requirements are in place in the State's recycling program, including the requirement to do waste determinations, the requirement to obtain hazardous waste i.d. numbers (except for VSQGs) and safe handling requirements. While less stringent with respect to certain details, the Massachusetts program is at least as stringent as the Federal program overall. In particular, the Massachusetts program regulates a broader universe of hazardous recyclable materials than are regulated in the Federal program. Even if the focus is limited to Federally regulated wastes, the Massachusetts program is as stringent as the Federal program overall. It regulates the recycling process itself as well as prior hazardous waste storage, unlike the Federal program which regulates only the storage. Finally, some of the State's more stringent storage requirements (described in Part I.D. above) have been applied to the storage of Class A materials, including additional labeling requirements and the prohibition of the use of open tanks.

Thus the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment, and constitute an acceptable alternative approach (to regulating hazardous recyclable materials) to the approach currently set forth in the Federal regulations. In addition, the EPA recently announced that it is planning to propose a change to its regulations to revise the Federal RCRA regulatory requirements with respect to recyclable materials that remain in use in a continuous industrial process. 49 FR 11251 (March 13, 2002). This is a part of the EPA's response to the court's decision in *Association of Battery Recyclers* v. *EPA,* 208 F.3d 1047 (D.C.Cir. 2000) (''*ABR*''), which set aside a portion of an EPA regulation regarding mineral processing industry recyclable materials. If the EPA ultimately adopts a regulation exempting recyclable materials used in a continuous industrial process from Federal RCRA regulation, this exemption is likely to cover at least most Class A recyclable materials.

The EPA does not believe that in light of the *ABR* decision, it should determine now that all Class A materials are not subject to Federal regulation, and thus conclude that the Class A regulations create no authorization issues. Such a result is not compelled by the court's decision and would prejudge the EPA's anticipated general rulemaking process. However, the fact that the EPA is planning to move in the direction of reducing regulation regarding recyclable materials is an additional reason counseling in favor of authorizing the State's program regarding Class A recyclable materials under the authority of a special EPA regulation. As mentioned above, the State's Class A program has operated successfully for many years. Requiring the State to now change that program to track EPA requirements does not make sense in the particular circumstances, including the EPA's announced intention to soon change the requirements.

The EPA is proposing to make the State-specific change to its Federal regulations pursuant to a proposal for flexibility submitted by the MADEP under the ECOS program. Under the Joint EPA/State Agreement to Pursue Regulatory Innovation, the EPA agreed to entertain State proposals for flexibility in an agreement entered into between the EPA and the Environmental Council of States. *See* 63 FR 24784 (May 5, 1998). As specified in that agreement, the EPA may accept State proposals to follow alternative regulatory requirements when (as here) the alternative requirements provide at least an equivalent overall level of environmental protection as the standard EPA mandated requirements.

C. What Is the Proposed Regulation Change?

The proposed change to the Federal regulations which will enable the EPA to grant the requested flexibility is set out at the end of this document. The EPA proposes to amend 40 CFR 262.10 to add a paragraph (k), which will specify that generators within Massachusetts may comply with the Class A regulations, when authorized, with respect to the recyclable materials and matters covered by the authorization, instead of complying with certain standard EPA regulations. The EPA proposes to have this new regulation take effect immediately upon its final promulgation. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change.

D. What Will Be the Effect of the Proposed Federal Regulation Change?

The proposed change to the Federal regulations will enable the EPA to authorize the Massachusetts regulations, since the Federal regulations will specify that the State regulations contain acceptable alternative standards

for Massachusetts. The State regulations will be equivalent to, consistent with and no less stringent than these acceptable alternative standards. Allowing the alternative standards is justified for the reasons discussed in part II.B, above. In particular, the EPA has determined that the alternative program is at least as stringent overall as the standard EPA RCRA program. The EPA believes that it has the authority to approve this alternative program under the RCRA statute.

However, the change to the Federal regulations will not itself result in any change to the legal requirements applicable to generators in Massachusetts. Rather, generators will become subject to the proposed revised Class A requirements under State law when they are adopted in final form by the MADEP. These requirements will in turn become part of the Federally enforceable RCRA program when they are authorized by the EPA. For the sake of efficiency, the EPA is proposing to both make the Federal regulation change and to authorize the State regulations in the rulemaking proposed today. Thus in this particular case, the EPA expects that the State requirements will become authorized and federally enforceable at the same time as the Federal regulation change.

Under section 3006 of RCRA, the EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State. (*See* 40 CFR part 271 for the requirements for authorization). States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, the EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013 and 7003.

After authorization, Federal rules written under RCRA provisions which predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. Rather, the authorized State regulations apply in lieu of such Federal requirements. In addition, new Federal requirements imposed by such rules do not take effect in an authorized state until the state adopts the requirements.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in non-authorized states. The EPA is directed to carry out HSWA requirements and prohibitions in authorized states until the state is granted authorization to do so.

This proposed rule, if finalized, would be promulgated pursuant to non-HSWA authority. Thus as explained above, the alternative standards contemplated by the rule will take effect in Massachusetts only when adopted by Massachusetts and will become Federally enforceable only when authorized by the EPA. Once they take effect, however, they will apply in lieu of the EPA program with respect to the recyclable materials and matters covered by the authorization. For example, generators storing solvents for recycling in stand alone stills/distillation units will be able to store such solvents without permits for more than the 90 or 180 days set out in the Federal regulations, so long as they do not engage in ''speculative accumulation.''

Of course, generators still will need to comply with any other applicable RCRA requirements in addition to the Class A requirements. For example, generators storing some wastes for recycling and other wastes for disposal will need to comply with the authorized State requirements regarding wastes being stored for disposal with respect to those other wastes. In addition, generators will need to comply with any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to HSWA, *i.e.*, all HSWA requirements for which the State has not yet been authorized.

In particular, the State has not yet been authorized for and the EPA is continuing to administer within Massachusetts the air emission standards for tanks and containers set out in 40 CFR part 265, subpart CC (''CC regulations''). These regulations are applicable to many large quantity generators storing solvents, among others. Following authorization of the Class A regulations, the EPA plans to administer and enforce these CC regulations within Massachusetts as follows. First, only generators which are classified as large quantity generators under the State regulations will be considered subject to the CC regulations. That is, the EPA will utilize the Massachusetts counting rules when administering the CC rule within Massachusetts. This will avoid generators needing to do two separate State and Federal status calculations. Second, however, any generators which are classified as large quantity generators under the State regulations with respect to any part of their site will be subject to the CC regulations throughout their sites. Large quantity generators storing solvents will need to comply with all applicable requirements imposed by the CC regulations, whether the solvents are being stored for disposal or recycling. That is, the EPA will not utilize the Massachusetts dual status concept when administering the CC rule within Massachusetts. The EPA expects that any generator which is a LQG will take the steps required under the CC rule to prevent hazardous air emissions, just as such generators are subject to all applicable Clean Air Act requirements whether they dispose of their wastes or recycle.

E. For How Long Will the Proposed Authorization Continue?

Unlike the proposed authorization of the Labs XL project regulations discussed in Part III below, the proposed authorization of the Massachusetts ECOS project regulations will continue indefinitely. The EPA believes this is justified based on the long successful operation of the Massachusetts Class A program, *i.e.*, no further assessment is necessary prior to the permanent authorization of this RCRA program element. Of course, like any other authorized program element, the Massachusetts Class A program will be subject to EPA oversight and possible future revision. But absent future EPA action to modify or rescind the action, the authorization will continue.

If the EPA issues future final regulations changing the status of recyclable materials used in a continuous industrial process under Federal RCRA regulation, portions of the Massachusetts Class A program now proposed to be authorized could then become beyond the scope of Federal regulation. If and when any revised national regulations take effect, the EPA will then address, in connection with a later update of the Massachusetts RCRA program, the effect of the national regulations on the Massachusetts program.

III. Proposed Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Proposed Authorization of Massachusetts XL Project Regulations

A. What Is the New England Universities' Laboratories XL Project?

Project XL—''eXcellence and Leadership'' was announced in May 1995 as a part of the National Performance Review and the EPA's effort to reinvent environmental protection. *See* 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop pilot projects to provide regulatory flexibility

that will result in environmental protection that is superior to what would be achieved through compliance with current standard regulations and reasonably anticipated future regulations.

One of the projects that has been approved under Project XL is the New England Universities' Laboratories project. A Project XL proposal that the EPA exercise flexibility under RCRA was developed for the University of Massachusetts—Boston, Boston, MA, Boston College, Chestnut Hill, MA, and the University of Vermont, Burlington, VT (the ''participating universities''). A Final Project Agreement approving the proposal was signed by the EPA, the participating universities, the MADEP and the Vermont Department of Environmental Conservation, on September 28, 1999. Pursuant to that agreement, the participating universities have been allowed to comply with Environmental Management Plans (EMPs) covering their laboratories in place of certain standard requirements for hazardous waste generators, during a trial period. In order to allow this experiment, the EPA adopted special regulations during 1999 which are set forth in 40 CFR 262.10(j) and 40 CFR 262.100–108. *See* 64 FR 52380 (September 28, 1999) (final rulemaking) and 64 FR 40696 (July 27, 1999) (proposed rulemaking). The reasons for approving the special EPA regulations are fully set forth in those rulemaking notices and will not be repeated here. Like the special regulation discussed in part II above in connection with the proposed ECOS project, the special EPA regulations were designed to enable the EPA to authorize State regulations that are different from the standard EPA regulations. Also like the ECOS project, the actual implementation of the XL project requires the adoption, and Federal authorization, of State regulations.

Following the adoption of EPA's special Project XL regulations, both Massachusetts and Vermont adopted regulations setting alternative standards for laboratories at the participating universities. The Vermont regulations were authorized by the EPA and became part of the Federally enforceable Vermont RCRA program on October 26, 2000. *See* 65 FR 64164. The Massachusetts regulations are in effect under State law and now have been submitted to the EPA to be authorized as part of the current update of the Massachusetts RCRA program.

B. Why Is the EPA Proposing To Extend the Expiration Date of Its XL Project Regulations?

The New England Universities' Laboratories XL project was initially planned to run for four years (September 1999 through September 2003). Thus the EPA project regulations currently have an expiration date of September 30, 2003. *See* 40 CFR 262.108.

The EPA conducted a mid-term evaluation of the project between September 2001 and September 2002. As set out in the mid-term evaluation report, the project has shown great success in some important areas: developing EMPs, training staff, increasing awareness, shifting attitudes and behaviors, improving the range of activities that determine compliance and emergency preparedness, and demonstrating that the environmental management system approach to managing laboratory waste is gaining hold and making progress. *See* Project in Excellence and Leadership: New England Universities' Laboratories Mid-Term Evaluation: Piloting Superior Environmental Performance in Labs, EPA 100–R–02–005 (September 2002), page 5. On the other hand, the project has not to date shown the expected successes in other areas such as chemical reuse and redistribution and pollution prevention. *Id.* The implementation of the EMPs proved to be complex, and took somewhat longer than anticipated, resulting in delays in aggressively focusing on reuse, redistribution and pollution prevention. However, efforts to encourage pollution prevention and ''Green Chemistry'' practices have begun to be more widely endorsed by faculty, and the EPA hopes and expects that they will bear fruit in the next several years.

Taking account of both the progress that has been made and the remaining issues, the EPA (with the concurrence of the MADEP and VTDEC) believes that the appropriate course of action is to extend the project's expiration date by three years, *i.e.,* to September 30, 2006. This will allow for a further period of evaluation, including a further test of whether the universities will succeed in their efforts to implement significant chemical reuse and redistribution and pollution prevention. In light of the success that has occurred in EMP development and implementation, the EPA believes that the continuation of this project should provide a superior level of environmental performance in comparison to an immediate return to standard RCRA regulation.

In addition, the EPA Office of Solid Waste currently is analyzing issues regarding the management of hazardous waste in laboratories, using a discussion group of EPA Headquarters and Regional personnel, which is expected to be followed by stakeholder meetings. This process may result in changes to the EPA requirements or the way the EPA interprets its requirements regarding laboratories. The proposed three-year extension of the New England Universities' Laboratories XL project will allow the three participating universities to continue to follow the alternative project requirements while the EPA considers whether to make changes in national policy. This will avoid those universities needing to terminate the project, prior to the EPA having a chance to consider whether standard RCRA requirements applicable to university laboratories should be changed. The continuation of the project also should provide information that is useful to the EPA as it analyzes the potential national impact of making changes regarding the management of hazardous waste in laboratories.

C. What Is the Proposed Federal Regulation Change?

The proposed Federal regulation change will extend the expiration date in 40 CFR 262.108 from September 30, 2003 to September 30, 2006. The other special EPA regulations adopted to allow the implementation of the New England Universities' Laboratories XL project will stay the same. The proposed regulation change is set out at the end of this document. The EPA proposes to have this regulation change take effect immediately upon its promulgation. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change. Massachusetts and Vermont also are in the process of changing their State regulations to extend the expiration date of this XL project to September 30, 2006. The EPA and other signatories also are proposing to amend the Final Project Agreement for this XL project to extend the expiration date, with annual reporting obligations also being extended and all other provisions of the agreement remaining the same.

D. What Will Be the Effect of the Proposed Federal Regulation Change?

The proposed change to the Federal regulations will enable the EPA to authorize the Massachusetts and Vermont regulations governing the New England Universities' Laboratories XL project through September 30, 2006. In Vermont's case, the State regulations

already have been authorized through September 30, 2003, and the EPA expects to extend this authorization through September 30, 2006 in a separate rulemaking. In Massachusetts' case, the State regulations (310 CMR 30.354) have been submitted to the EPA to be authorized as part of this current update of the Massachusetts RCRA program. The EPA proposes to grant this authorization through September 30, 2006, following public comment, as part of this rulemaking, once the currently proposed updated Massachusetts RCRA regulations have been adopted in final form.

The different effects of authorization regarding HSWA and non-HSWA rules was discussed above in part II.D. The proposed extension to the Federal XL project regulation would be promulgated pursuant to non-HSWA authority. Thus the extension will take effect in Massachusetts only when adopted by Massachusetts and will become Federally enforceable only when the State regulations containing the extension are authorized by the EPA.

IV. Statutory and Executive Order Reviews

The EPA has examined the cumulative effects of the proposed State authorization decisions discussed above, and the two proposals to make changes to the Federal regulations, and reached the conclusions set out below.

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 Office of Management and Budget (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 effect 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(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.

Because the annualized cost of these proposed actions will be significantly less than $100 million and because these proposed actions will not meet any of the other criteria specified in the Executive Order, it has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or final rule. These proposed actions will authorize or enable the authorization of state requirements for the purpose of RCRA 3006 and will impose no additional requirements beyond those imposed by State law. Therefore, they will require no information collection activities subject to the Paperwork Reduction Act. In addition, no Federal reporting obligations have been established under the ECOS project. Rather, the EPA will monitor this project through its regular oversight of the Massachusetts RCRA program. Finally, the New England Universities' Laboratories XL project applies to only three universities, and any reporting obligations for nine or fewer sources are not subject to the Paperwork Reduction Act. Therefore no information collection request (ICR) will be submitted to OMB for review under the Paperwork Reduction Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking under the Administrative Procedure Act or 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.

These actions authorize or enable the authorization of state requirements for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by state law. In addition, the two proposed Federal regulatory changes will increase regulatory flexibility, which should have a positive economic effect on small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, the impact of concern is any significant adverse economic impact, since the primary purpose of any regulatory flexibility analysis would be 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. Accordingly, the EPA hereby certifies that this action 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.*). Thus a regulatory flexibility analysis is not required to be prepared under that Act.

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, the 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 the 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 the 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. In addition, before the 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 about the regulatory requirements, enabling officials of affected small governments to have meaningful and timely input in

the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the section 202 and 205 requirements do not apply to this proposed action because the proposed rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local or tribal governments and the private sector already exist under the State program, and the proposed actions will not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector, by reducing the need for companies to comply with Federal requirements in addition to State requirements. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not cover duties arising from voluntary participation in a Federal program, such as Massachusett's voluntary decision to operate the RCRA program.

Because this action will authorize pre-existing requirements under state law and will not impose any additional enforceable duties beyond those required by state law, it also will not uniquely affect small governments, as described in section 203 of UMRA. Thus the requirements of section 203 that the EPA develop a small government agency plan will not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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.''

The proposed actions will not have Federalism implications, as defined in the Executive Order, because they merely authorize (or enable the authorization of) state requirements as part of the State RCRA hazardous waste program, without altering the relationship or the distribution of power and responsibilities established by RCRA.

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 the 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 the Indian tribes.''

The proposed actions will not have tribal implications, as defined by the Executive Order, because they will have no direct effect on Indian lands. As noted in part I.E. above, Massachusetts is not authorized to administer the RCRA program in Indian country. Rather, the EPA directly administers the Federal RCRA program in Indian country within Massachusetts.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' 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 the 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.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. In addition, it does not concern environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

As discussed in parts II and III above, the EPA has determined that the regulatory flexibility to be allowed by the two proposed Federal regulatory changes will not create health and safety risks. In any event, the particular RCRA program elements affected do not pose any disproportionate risks to children. As discussed in part I above, the standard authorization portion of this rule simply authorizes Massachusetts regulations which are equivalent to previously established Federal RCRA requirements. Authorizing State regulations which equivalently protect the environment, in place of Federal regulations, does not create any disproportionate risks to children.

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

This proposed rule is not subject to Executive Order 13211 because that Executive Order applies only to rules that are ''significant'' under Executive Order 12866, and this rule is not a significant regulatory action under Executive Order 12866.

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, section 12(d) (15 U.S.C. 272 note) directs the 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 the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards covered by voluntary consensus standards. In addition, under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required under RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Therefore, the EPA did not consider the use of any voluntary consensus standards in developing this rule.

List of Subjects

40 CFR Part 262

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: The proposed Federal regulation changes will be made under the authority of the Resource Conservation and Recovery Act (RCRA) sections 2002 and 3002, 42 U.S.C. 6912 and 6922. The proposed authorizations of the Massachusetts revisions will be made under the authority of RCRA sections 2002 and 3006, 42 U.S.C. 6912 and 6926.

Dated: October 7, 2003.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart A—General

2. Section 262.10 is amended by adding paragraph (k) to read as follows:

§ 262.10 Purpose, scope and applicability.

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264 and 265 and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

Subpart J—University Laboratories XL Project—Laboratory Environmental Management Standard

3. Section 262.108 is revised to read as follows:

§ 262.108 When will this subpart expire?

This subpart will expire on September 30, 2006.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA proposes to grant Final authorization under part 271 to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

[FR Doc. 03–26321 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 1625–AA27 (formerly 2115–AG07)

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period on the notice of proposed rulemaking for ''Marine Casualties and Investigation; Chemical Testing Following Serious Marine Incidents'' published in the **Federal Register** on February 28, 2003. Hurricane Isabel forced the closure of all Federal Government offices in the Washington, DC, metropolitan area and the public meeting scheduled for September 19, 2003, was not held. As a result of the limited number of participants who registered to attend that meeting, the Coast Guard has decided not to reschedule the meeting and is instead reopening the comment period to allow submission of additional comments to the docket.

DATES: Comments must reach the docket on or before November 20, 2003.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2001–8773 to the Docket Management Facility at the U.S. Department of Transportation (DOT). To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Federal eRulemaking Portal: *http://www.regulations.gov.*

(3) Mail: Docket Management Facility, DOT, 400 Seventh Street SW., Washington, DC 20590–0001.

(4) Fax: (202) 493–2251.

(5) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on the proposed rule, call Mr. Robert C. Schoening, Drug and Alcohol Program Manager, telephone (202) 267–0684; or e-mail him at *Rschoening@comdt.uscg.mil.* For questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, DOT, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the DOT to use the Docket Management Facility even though the Coast Guard has recently transferred to DHS. Please see the DOT's statement on the Privacy Act three paragraphs below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking [USCG–2001–8773], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or

envelope. We will consider all comments and material received during the comment period in developing the final rule.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or the like). You may review the DOT's statement on the Privacy Act in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Regulatory History

On February 28, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** [68 FR 9622] proposing changes to the alcohol testing requirements for commercial vessels following a serious marine incident.

On August 28, 2003, the Coast Guard published a notice in the **Federal Register** [68 FR 50992], announcing a public meeting and reopening the NPRM comment period.

Background Information

The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol testing devices on board, and to authorize the use of a wider variety of testing devices.

For further information, the public should review the NPRM published in the **Federal Register** [68 FR 9622], and for questions concerning that document contact Mr. Robert C. Schoening who is listed under **FOR FURTHER INFORMATION CONTACT.**

Additional Comment Period

In response to seven comments to the NPRM requesting a public meeting, the Coast Guard had scheduled a public meeting for September 19, 2003. As a result of Hurricane Isabel forcing the closure of all Federal Government offices in the Washington, DC, metropolitan area, the public meeting was not held. In its notice, the Coast Guard had asked those planning to speak at the meeting to register by September 17, 2003.

By the close of business on September 17, 2003, nine persons had registered to attend the public meeting, with seven requesting to speak. Of the seven persons who originally submitted comments requesting a meeting, only two had registered to attend and to make a presentation.

As a result of the limited number of participants who registered to attend the meeting, the Coast Guard has decided not to reschedule the meeting and is, instead, reopening the comment period for an additional 30 days from the date of this notice.

This additional 30-day comment period should be adequate time for those who had planned to attend the public meeting to submit further comments to the docket.

Dated: October 14, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–26512 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2910; MB Docket No. 03–208, RM–10793]

Radio Broadcasting Services; Arthur and Hazelton, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by Vision Media Incorporated proposing the substitution of Channel 280C1 for Channel 280C3 at Arthur, North Dakota, and the modification of Station KVMI(FM)'s license accordingly. To accommodate the upgrade, we also proposed the substitution of Channel 277C for vacant Channel 280C at Hazelton, North Dakota. Channel 280C1 can be substituted at Arthur in compliance with the Commission's minimum distance separation requirements with a site restriction of 48.5 kilometers (30.1 miles) northwest at petitioner's requested site. The coordinates for Channel 280C1 at Arthur are 47–19–35 North Latitude and 97–46–15 West Longitude. Additionally, Channel 277C can be substituted at Hazelton with a site restriction of 51.6 kilometers (32.0 miles) west at petitioner's requested modified site. The coordinates for Channel 277C at Hazelton are 46–22–06 North Latitude and 100–55–49 West Longitude. Since both Arthur and Hazelton are located within 320 kilometers (200 miles) of the U.S-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 280C1 at Arthur, North Dakota.

DATES: Comments must be filed on or before November 24, 2003, reply comments on or before December 9, 2003.

ADDRESSES: 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: Michael W. Richards, Esq., Fletcher, Heald & Hildreth, P.L.C., 1700 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–208, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, 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

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 280A [1] and adding Channel 280C1 at Arthur; and by removing Channel 280C and adding Channel 277C at Hazelton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26499 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

[1] The Audio Division granted a license application (BLH–20030303ACH) for Station KVMI on May 21, 2003 to specify operation on Channel 280C3 in lieu of Channel 280A.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 101503D]

Western Pacific Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will convene public hearings on the Draft Environmental Impact Statement (DEIS) for the Bottomfish and Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP). The DEIS presents an overall picture of the environmental effects of the existing fishery activities as conducted under the Bottomfish FMP. In addition, the DEIS analyzes the biological, economic, and social impacts that would result from alternative regulatory regimes conducted under the FMP.

DATES: The public hearings will be conducted between October 21, 2003 and November 23, 2003 (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and locations).

ADDRESSES: Written comments on the DEIS should be sent to Dr. Sam Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Ste. 1110, Honolulu, HI 96814–4700 or via fax to (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, WPFMC, at (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Dates, Times, and Locations of Public Hearings

1. Kauai, HI—Monday, October 27, 2003, from 7–9 p.m. at Chiefess Kamakahelei Middle School, 4431 Nuhou St., Lihue, Kauai 96766;

2. Maui, HI—Tuesday, October 28, 2003, from 7–9 p.m. at the Maui Beach Hotel, 170 Kaahumanu Ave., Kahului, Maui 96732;

3. Hilo, HI—Wednesday, October 29, 2003, from 7–9 p.m. at the University of Hawaii-Hilo Campus Center, 200 W. Kawaili St., Hilo, HI 96720.

4. Hawaii, HI—Thursday, October 30, 2003, from 7–9 p.m. at King Kamehameha Hotel, 75–5660 Plalani Rd., Kona, HI 96740;

5. American Samoa—Thursday, November 6, 2003, from 7–9 p.m. at the Department of Marine Resources and Wildlife Conference Room, Pago Pago, American Samoa 96799;

6. Oahu, HI—Thursday, November 13, 2003, from 7–9 p.m. at the Fisherman's Wharf, 1009 Ala Moana Blvd., Honolulu, HI 96814;

7. Saipan, CNMI—Wednesday, November 19, 2003 from 7–9 p.m. at the Pedro P. Tenorio Multipurpose Building, Susupe, CNMI 96950;

8. Agana (Hagatna), Guam—November 20, 2003 from 7–9 p.m. at the Guam Fishermen's Cooperative, Perez Marina, Hagatna, Guam 96932.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, Executive Director, WPFMC,(808) 522–8220 or (808)522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–26550 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 203

Tuesday, October 21, 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

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet October 27–29, 2003.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001. Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: *dhanfman@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION: On Monday, October 27, 2003, an orientation session for new Board members will be held from 8:30 a.m. to 10:30 a.m., and at 10:45 a.m. the full Advisory Board will convene for a brief session ending at noon. At noon, Board members will depart for field tours at the Beltsville Human Nutrition Research Center (Agricultural Research Service) and the Expanded Food and Nutrition Education Program (Cooperative Service Research, Education, and Extension Service). Tours, which will be open to the public, are scheduled from 12:45 p.m. to approximately 5 p.m. On Tuesday, October 28, 2003, an Advisory Board meeting and focus session, entitled ''Food and Nutrition in Obesity Prevention: Implications for Research and Education,'' will begin at 8 a.m. and end at 5:30 p.m. An evening reception and program will be held from 6 p.m. to 7:30 p.m. On Wednesday, October 29, 2003, the focus session will reconvene at 8:30 a.m. and end at noon.

Done at Washington, DC this 10th day of October 2003.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–26449 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the Research, Education, and Economics Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Research, Education, and Economics Task Force.

DATES: The Research, Education, and Economics Task Force will meet on October 27, 2003.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: On October 27, the meeting will take place at the Holiday Inn—Washington on the Hill, 415 New Jersey Ave., NW., Washington, DC 20001.

Written comments from the public may be sent to the Contact Person identified in this notice at: The Research, Education, and Economics Task Force; Office of the Under Secretary, Room 214–W, Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Kathryn Boots, Executive Director, Research, Education, and Economics Task Force; telephone: (202) 690–0826; fax: (202) 690–2842; or email: *katie.boots@usda.gov.*

SUPPLEMENTARY INFORMATION: On Monday, October 27, 2003, the Research, Education, and Economics Task Force will hold a general meeting at The Holiday Inn—Washington on the Hill. The Task Force will continue its evaluation of the merits of establishing one or more National Institutes focused on disciplines important to the progress of food and Agricultural science. In the morning there will be welcoming remarks made by the Chairman of the Task Force, Dr. William Danforth, Chancellor Emeritus, Vice Chairman, Board of Trustees, Washington University in St. Louis, as well as the USDA Under Secretary for Research, Education, and Economics (REE), Dr. Joseph J. Jen. Welcoming remarks will be followed by a discussion about plans for subsequent Task Force meetings; an account of consultations made since the July 31 Task Force meeting; examination of the scope of the REE Task Force Report; characteristics of what an NIH—like institute for agriculture would include; structuring support for such an institute; and preparation for the next Task Force meeting. The Task Force Meeting will adjourn on Monday, October 27 around 4 p.m. This meeting is open to the public. Due to a delay, this notice could not be published at least 15 days prior to the meeting date. The meeting will be held as scheduled because of the significant sacrifice rescheduling would require of Task Force members who have adjusted their schedules to accommodate the proposed meeting date. Written comments for the public record will be welcomed before and up to two weeks following the Task Force meeting (by close of business Monday, November 10, 2003).

All statements will become part of the official record of the Research, Education, and Economics Task Force and will be kept on file for public review in the Office of the Under

Secretary for Research, Education, and Economics.

Done at Washington, DC this 15th day of October 2003.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–26523 Filed 10–20–03; 8:45 am]

BILLING CODE 3401–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the green cotyledon spring pea variety designated ''Stirling'' is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the Washington State University Research Foundation of Pullman, Washington, an exclusive license to this variety.

DATES: Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the Washington State University Research Foundation of Pullman, Washington, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 03–26522 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Approval of a New Information Collection—Rate Quotation for Transportation Services

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Commodity Credit Corporation is seeking approval from the Office of Management and Budget (OMB) to obtain freight rates to haul agricultural products for the Department of Agriculture.

This information collection will allow CCC to establish the lowest cost of movement, via Motor Carriers and Intermodal Marketing Companies (IMCs), to meet the transportation needs of CCC, for the transportation of commodities.

DATES: Comments on this notice must be received on or before December 22, 2003 to be assured consideration.

ADDRESSES: Comments concerning this notice should be addressed to Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676; telephone (816) 926–6509: e-mail: *dgryles@kcc.fsa.usda.gov.* Comments may be faxed to (816) 926–1648.

SUPPLEMENTARY INFORMATION:

Title: Rate Quotation for Transportation Services.

OMB Control Number: 0560–NEW.

Type of Request: New information collection.

Abstract: CCC, through the Kansas City Commodity Office (KCCO), solicits bids from approved Motor Carriers and Intermodal Marketing Companies for the purpose of providing transportation of agricultural commodities. Motor Carriers provide over the road trucking, and Intermodal Marketing Companies provide rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service that CCC hires to meet program transportation needs. Motor Carriers and IMCs that offer rate quotations for transportation services to KCCO Export Operations Division (EOD) are required to complete and submit the KC–5, Rate Quotation for Transportation Services form. EOD is collecting information to establish the lowest cost of movement via Motor Carriers and IMCs to meet transportation needs of U.S. Department of Agriculture. EOD must ensure that Motor Carriers and IMCs providing the transportation service have both the willingness and the capacity to meet these needs.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor Carriers and Intermodal Marketing Companies.

Respondents: 132.

Estimated Number of Annual Responses per Respondent: 41.

Estimated Total Annual Burden on Respondents: 1,353 hours.

Proposed topics for comment include: (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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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. Comments regarding this information collection requirement may be directed to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648. All comments will become a matter of public record.

Signed in Washington, DC, on October 8, 2003.

Verle E. Lanier,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–26448 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Georgia Shrimp Association, Darien, Georgia, for trade adjustment assistance. The group represents Georgia shrimpers of wild, ocean caught shrimp. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 2002 and ending December 2002. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: October 8, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–26521 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Texas Shrimp Association, Arkansas Pass, Texas, for trade adjustment assistance. The group represents Texas shrimpers of gulf caught shrimp. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 2002 and ending December 2002. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: October 8, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–26520 Filed 10–20–03; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island 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 planning meeting of the Rhode Island Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4:30 pm on October 23, 2003, at the Tillinghast, Licht, Perkins, Smith & Cohen, LLP, 10 Weybosset Street—10th Floor, Providence, RI 02903. The purpose of the meeting is to prepare for the upcoming project, Present and Future of Racial Profiling in Rhode Island: Reviewing the Implementation of the Rhode Island Traffic Stops Act of 2000 and its Ramifications. The Committee will review and vote upon staff's draft project proposal and assign subcommittee members for various project tasks.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, (202) 376–7533 (TDD (202) 376–8116). Hearing-impaired persons who will attend the meeting and require there 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, October 1, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–26506 Filed 10–20–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota 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 South Dakota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Wednesday, November 5, 2003, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to discuss and formally vote on the proposed regional project ''Confronting Discrimination in Reservation Border Town Communities.'' There will also be a briefing by experts on the status of research in the Criminal Justice System and Native Americans, as well as the impacts of ''No Child Left Behind'' in South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD (303) 866–1049). 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 (5) 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, October 10, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–26505 Filed 10–20–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming 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 Wyoming Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 1 p.m. on Saturday, October 25, 2003, at the Best Western Hitching Post Inn, 1700 W. Lincolnway, Cheyenne, Wyoming 82001. The purpose of this meeting is to conduct a planning of future activities including the consideration of regional project. The meeting will also provide an update on progress of current project on the

dropout rates of minority students in Wyoming Public Schools. The Committee will also hold briefing on Civil Rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). 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 (5) 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, October 14, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–26507 Filed 10–20–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Advanced Technology Program (ATP).

Form Number(s): NIST–1262 and NIST–1263.

OMB Approval Number: 0693–0009.

Type of Review: Emergency submission.

Burden Hours: 27,125.

Number of Respondents: 1,425.

Average Hours Per Response: 25 hours for proposals and 5 hours for post award project surveys.

Needs and Uses: The ATP is a competitive cost sharing program designed to assist United States businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding through the use of cooperative agreements to single companies and to industry-led joint ventures. In order to participate, proposals must be submitted addressing the ATP selection criteria. The information is used to perform the requisite technical and business reviews of the proposals to determine if an award should be granted.

Affected Public: Business or other for-profit organizations, non-profit organizations, and individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent by November 20, 2003 to Jacqueline Zeiher, OMB Desk Officer, *Jzeiher@omb.eop.gov,* Fax Number (202) 395–5167.

Dated: October 15, 2003

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26527 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings--Treatment of Section 201 Duties and Countervailing Duties; Extension of Time for Rebuttal Comments

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time for rebuttal comments.

SUMMARY: On September 9, 2003, the Department of Commerce published a notice requesting comments on the appropriateness of deducting section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in antidumping duty calculations. Comments were received by October 9, 2003. The Department is now extending the time for rebuttal comments to November 7, 2003.

DATE: To be assured consideration, rebuttal comments must be received no later than November 7, 2003.

ADDRESSES: Submit comments to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; Attention: Section 201 Duties.

FOR FURTHER INFORMATION CONTACT: Becky Erkul, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1277.

Background

On September 9, 2003, the Department of Commerce published a notice requesting comments on the appropriateness of deducting section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in antidumping duty calculations. See, *Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties*, 68 FR 53104 (September 9, 2003). Comments were received by October 9, 2003. Due to the large number of comments received, the Department is extending the time for rebuttal comments to November 7, 2003.

Comments--Deadline, Format, and Number of Copies

Parties wishing to submit rebuttal comments should file a signed original and six copies of each set of rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B-099, between the hours of 8:30 a.m. and 5 p.m. on business days. Each person submitting a rebuttal comment should include the commenter's name and address, and give reasons for any recommendations. In order to ensure timely and complete distribution of comments, the Department recommends the submission of rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on a DOS formatted 3.5'' diskette, Iomega Zip disk, or Compact Disc (CD-R or CD-RW).

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the IA Web site at the following address: http://ia.ita.doc.gov/.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address webmaster__support@ita.doc.gov.

Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing is

warranted, and, if so, will announce a place and time for that hearing.

Dated: October 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26536 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–098]

Anhydrous Sodium Metasilicate from France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 28, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The period of review is January 1, 2002, through December 31, 2002. This review covers imports of anhydrous sodium metasilicate from one producer/exporter, Rhodia HPCII. We provided interested parties with an opportunity to comment on the preliminary results of this review, but we received no comments.

Furthermore, the Department made no changes in its analysis following the publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary result of review.

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2003, the Department of Commerce (the Department) published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. See *Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283 (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*, but we received no comments. We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Order

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under *Harmonized Tariff Schedules of the United States* (HTSUS) item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Review

The period of review is from January 1, 2002, through December 31, 2002.

Facts Available

As discussed in detail in the *Preliminary Results*, we have determined to use facts otherwise available for Rhodia HPCII (Rhodia), which did not respond timely to our requests for information.

Final Results of the Review

As a result of our determination that it is appropriate to apply adverse facts available to Rhodia, we determine that the weighted-average dumping margin of 60.00 percent exists for Rhodia for the period of January 1, 2002, through December 31, 2002. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct the U.S. Bureau of Customs and Border Protection (Customs) to assess the assessment rate against the entered customs values for the subject merchandise on each entry during the review period.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for the consumption on or after publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for Rhodia will be 60.00 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit 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 less-than-fair-value (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) for all other producers and/or exporters of this merchandise, the cash-deposit rate shall be 60.00 percent, the ''all others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

Furthermore, pursuant to 19 CFR 351.402(f)(2), this notice serves as a final reminder to importers of their responsibility 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 an the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: October 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26535 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–813]

Canned Pineapple Fruit From Thailand: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce (the Department) conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand for the period July 1, 2002, through June 30, 2003. We are now rescinding this review with respect to four companies for which the requests for an administrative review have been withdrawn.

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle,at (202) 482–2336 or (202) 482–0650, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published a notice of opportunity to request the eighth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 39511 (July 2, 2003). On July 30, 2003, in accordance with 19 CFR 351.213(b), Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union (the petitioners) requested a review of eight producers/exporters of canned pineapple fruit. Also, between the dates of July 28, 2003, and July 31, 2003, four Thai producers requested a review on their own behalf, three of which also requested revocation. Taking into consideration the overlap in the aforementioned requests, the total number of companies currently under review is eight.

On August 22, 2003, the Department published a notice of initiation of this antidumping duty administrative review, covering the period July 1, 2002, through June 30, 2003, *see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750. The initiation covered eight companies. On August 27, 2003, the petitioner withdrew its review request for four companies. None of these four companies had requested a review on its own behalf.

Partial Rescission of Antidumping Duty Administrative Review

Pursuant to 19 CFR 351.213 (d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. Petitioners withdrew their requests for review within the 90 day time limit. Accordingly, the four companies for which the review will be rescinded are as follows: Thai Pineapple Canning Industry Corporation, The Prachuab Fruit Canning Company, Siam Fruit Canning (1988) Co., Ltd., and Malee Sampran Public Company Ltd.

Pursuant to Section 315.213(d)(1) of the Department's regulations, we are rescinding the administrative review with respect to each of the above-listed companies. The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection within 15 days of publication of this notice.This notice is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26532 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Termination of the suspension agreement on certain cut-to-length carbon steel plate from the People's Republic of China (''China'') and notice of antidumping duty order.

SUMMARY: On August 29, 2003, the Embassy of the People's Republic of China (''the Embassy'') submitted a letter informally to the Department of Commerce (''the Department'') announcing its intention to withdraw from the suspension agreement on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China (''the Agreement''). On September 4, 2003, the letter was put on the public and official record in the Central Records Unit (''CRU'') of the Department and interested parties were notified (*see Memo to the File: Interested Parties Notified of the Withdrawal by the Government of the People's Republic of China (''GOC'') from the Suspension Agreement (''the Agreement'') on Certain Carbon Cut-to-length Plate (''CTL plate'') from China,* (December 10, 2003)). In accordance with Section XII of the Agreement, termination of the Agreement shall be effective 60 days after notice of termination of the Agreement is given to the Department. In 1997, the underlying investigation was continued following the signature of the Agreement, pursuant to section 734(g) of the Tariff Act of 1930, as amended (''the Act''), resulting in an affirmative determination of dumping and of material injury. Therefore, the Department is terminating the Agreement and issuing an antidumping duty order, effective November 3, 2003 (60 days from the official filing of the request for termination), and will direct suspension of liquidation to also begin on that date.

EFFECTIVE DATE: November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Rachel Kreissl, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1997, the Department signed an agreement with the Government of the People's Republic of China (''GOC'') suspending the antidumping investigation on CTL plate from China (*see Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 62 FR 61773 (November 19, 1997)). In accordance with section 734(g) of the Act, on November 20, 1997, the Department published its final determination of sales at less than fair value in this case (*see Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 62 FR 61964 (November 20, 1997)), followed by an

amended final on January 12, 1998 (*see Amended Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 63 FR 1821 (January 12, 1998)). On December 17, 1997, the International Trade Commission (''ITC'') determined that an industry in the United States was materially injured by reason of imports of CTL plate from China that were being sold at less than fair value (*see Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine,* 62 FR 66128, Investigation No. 731–TA–753–756 (Final) Publication 3076; December 17, 1997)).

Although notice of the opportunity to request an administrative review was issued in November 1998, November 1999, October 2000, October 2001, and October 2002, no review was ever requested by either petitioners or respondents (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 63 FR 63287 (November 12, 1998)); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 64 FR 62167 (November 16, 1999)); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 65 FR 63057 (October 20, 2000); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 66 FR 49923 (October 1, 2001); and *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 67 FR 61849 (October 2, 2002)).

On September 3, 2002, the Department initiated (*see Notice of Initiation of Five-Year (''Sunset'') Reviews,* 67 FR 56268 (September 3, 2002)) and the ITC instituted (*see Institution of Five-year Reviews Concerning the Suspended Investigations on Cut-to-length (CTL) Carbon Steel Plate from China, Russia, South Africa, and Ukraine,* 67 FR 56311 (September 3, 2002)) a sunset review of the agreement, pursuant to section 751(c) of the Act. On December 9, 2002, the ITC determined to conduct full five-year reviews pursuant to section 751(c)(5) of the Act (*see Notice of Commission Determinations to Conduct Full Five-year Reviews Concerning the Antidumping Duty Orders on Cut-to-length Carbon Steel Plate from China, Russia, South Africa, and Ukraine,* 67 FR 77803 (December 19, 2002)). As a result of its review, on January 8, 2003, the Department determined that termination of the suspended investigation underlying the agreement would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margin likely to prevail were the suspended investigation underlying the agreement terminated (*see Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa; Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigations,* 68 FR 1038 (January 8, 2003)).

On August 18, 2003, the ITC determined that termination of the suspended investigation on CTL plate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Cut-to-Length Carbon Steel Plate From China, Russia, South Africa, and Ukraine,* 68 FR 52614; ITC Publication No. 3626 (September 4, 2003)). Pursuant to the ITC's affirmative determination in the five-year sunset review, the Department issued a notice of continuation on September 12, 2003, for the suspended investigation underlying the Agreement on CTL plate from China (*see Continuation of Suspended Antidumping Duty Investigations: Cut-to-length Carbon Steel Plate from the People's Republic of China, the Russian Federation, and Ukraine*).

On August 29, 2003, referencing Article XII of the Agreement, the Embassy of China in Washington, DC, submitted a facsimile request informing the Department that ''the Chinese side has decided to withdraw from the Suspension Agreement on Cut-to-length Carbon Steel Plate, which will expire on October 30, 2003'' (*see Memo to the File: Interested Parties Notified of the Withdrawal by the Government of the People's Republic of China (''GOC'') from the Suspension Agreement (''the Agreement'') on Certain Carbon Cut-to-length Plate (''CTL plate'') from China,* (December 10, 2003)). On September 4, 2003, the letter was put on the public and official record in the Central Records Unit (''CRU'') of the Department and interested parties were notified (*see Memo to the File: Interested Parties Notified of the Withdrawal by the Government of the People's Republic of China (''GOC'') from the Suspension Agreement (''the Agreement'') on Certain Carbon Cut-to-length Plate (''CTL plate'') from China,* (December 10, 2003)).

Scope of Agreement

The merchandise covered by this agreement is Certain Cut-to-length Carbon Steel Plate from the People's Republic of China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

Termination of Suspended Investigation and Issuance of Antidumping Duty Order

Article XII of the Agreement states, in part:

''The Government of the People's Republic of China may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of MOFTEC,

the provisions of Section 734(i) of the Act shall apply.''

As noted above, the underlying investigation in this proceeding was continued pursuant to section 734(g) of the Act following the acceptance of the Agreement. As a result of the continued investigation, the Department made a final determination of dumping, and the ITC found material injury. Section 734(i)(1)(A) of the Act stipulates that the Department shall:

Suspend liquidation under section 733(d)(2) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsection (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption. . . .

Furthermore, section 734(i)(1)(C) stipulates that the Department shall:

If the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended.

Finally, section 734(i)(1)(E) stipulates that the Department shall:

Notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its actions under this paragraph.

The GOC's request for termination of the suspension agreement is effective November 3, 2003, which is the date the agreement will no longer meet the requirements of section 734(d) of the Act. Because the GOC is withdrawing its participation from the Agreement, the Department finds that suspension of the underlying investigation will no longer be in the public interest as of that date (*see* section 734(d)(1)). Therefore, the Department will direct the U.S. Bureau of Customs and Border Protection (''BCBP'') to suspend liquidation of all entries of CTL plate from China effective November 3, 2003. Accordingly, pursuant to section 734(i)(1)(C) of the Act, the Department hereby issues an antidumping duty order effective November 3, 2003, which is 60 days from the official filing date of the termination request of the GOC.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct BCBP to assess, beginning on November 3, 2003, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all entries of CTL plate from China. These antidumping duties will be assessed on all unliquidated entries of CTL plate from China entered, or withdrawn from warehouse, for consumption on or after November 3, 2003.

We will instruct BCBP to require a cash deposit for each entry equal to the antidumping duty margins found in our amended final determination of January 12, 1998, as listed below. These suspension-of-liquidation instructions will remain in effect until further notice. The ''China-Wide Rate'' applies to all producers and exporters of subject CTL plate not specifically listed. The final weighted-average dumping margins are as follows:

Manufacturer/Exporter	Weighted-average margin (percent)
Anshan (AISCO/Anshan International/Sincerely Asia Ltd)	30.68
Baoshan (Bao/Baoshan International Trade Corp/ Bao Steel Metals Trading Corp)	30.51
Liaoning	17.33
Shanghai Pudong	38.16
WISCO (Wuhan/International Economic and Trading Corp/Cheerwu Trader Ltd)	128.59
China-wide Rate	128.59

This notice constitutes the antidumping duty order with respect to CTL plate from China. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 734(i) and 777(i) of the Act. This order is published in accordance with section 736(a) of the Act.

Dated: October 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26530 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-201–802)

Gray Portland Cement and Clinker From Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 16, 2003, the Department of Commerce published the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2001, through July 31, 2002.

As a result of our analysis of CEMEX's, GCCC's and the petitioner's comments, we are amending the final results of antidumping administrative review.

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3477 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (68 FR 54203) (*Final Results*).

On September 17, 2003, CEMEX, GCCC, and the petitioner filed a timely allegation that the Department made ministerial errors in the *Final Results*. Specifically, CEMEX and GCCC alleged that (1) the Department's decision to apply adverse facts available to GCCC's further-manufactured cement sales is a ministerial error, (2) the Department's conclusion that GCCC's U.S. affiliate, Rio Grande Materials, Inc., was the only U.S. subsidiary that further-manufactured cement is a ministerial error, (3) the Department made a ministerial error with respect to the

calculation of the per-unit cash-deposit rate, and (4) the Department made an ministerial error when it determined the duty-assessment rate by combining the antidumping duties due for sales by CEMEX and GCCC into one weighted-average rate. The petitioner alleged that the Department inadvertently subtracted GCCC's terminal-specific general and administrative expenses from the calculation of U.S. indirect selling expenses. On September 24, 2003, the petitioner and GCCC submitted rebuttal comments in reply to the ministerial-error allegations.

We have reviewed the calculations in the *Final Results* and find that there are two errors that constitute ministerial errors within the meaning of 19 CFR 351.224(f). We found several of CEMEX's and GCCC's allegations to involve methodological issues rather than ministerial errors and therefore we have not adjusted CEMEX's/GCCC's final antidumping duty margin based on those allegations. For a detailed analysis of the ministerial-error allegations and the Department's position on each, see Memorandum to Jeffrey May, Deputy Assistant Secretary for Import Administration, from Laurie Parkhill, Office Director, Group 1, Office 3, dated October 14, 2003.

Pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act), we have amended the *Final Results* by correcting the following errors: (1) the calculation of the per-unit cash-deposit amount and (2) the inclusion of GCCC's terminal-specific indirect selling expense in the calculation of U.S. indirect selling expenses. Correction of these errors changes the final antidumping duty margin from 79.81 percent to 80.75 percent and the per-unit cash-deposit amount from U.S. $61.60 per metric ton to U.S. $52.42 per metric ton. Consequently, we will issue amended cash-deposit instructions to the U.S. Customs and Border Protection (Customs) to reflect the amendment of the final results of review.

Assessment Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. As amended by this determination and in accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate. For the sales in the United States through the respondents' affiliated U.S. parties, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

We are issuing and publishing this determination and notice in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: October 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26531 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-834–807]

Silicomanganese from Kazakhstan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty Administrative Review.

SUMMARY: On July 1, 2003, in response to a request made by Considar, an importer of the subject merchandise, the Department of Commerce (''Department'') published a notice of initiation of an antidumping duty administrative review of silicomanganese from Kazakhstan, for the period of review (''POR'') November 9, 2001 through April 30, 2003. Because Considar has withdrawn its request for review, and there were no other requests for review for this time period, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0159.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2003, Considar, an exporter of the subject merchandise, requested that the Department conduct an administrative review of its sales for the period November 9, 2001 through April 30, 2003. Considar was the only interested party to request a review for this time period. On July 1, 2003, the Department published a notice of initiation of the antidumping administrative review of silicomanganese from Kazakhstan, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 68 FR 39055 (July 1, 2003). On July 17, 2003, the Department amended the initiation notice. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part; Correction*, 68 FR 42373 (July 17, 2003). On September 29, 2003, Considar withdrew its request for review.

Rescission of Review

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Considar, the only interested party to request an administrative review for this time period, withdrew its request for this review within the 90-day time limit; accordingly, we are rescinding the administrative review for the period November 9, 2001 through April 30, 2003, and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26534 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–825, A–580–853, A–588–863]

Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and the Republic of Korea; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determinations in antidumping duty investigations.

SUMMARY: The Department of Commerce is postponing the preliminary determinations in the antidumping duty investigations of wax and wax/resin thermal transfer ribbons from France, Japan and the Republic of Korea from November 6, 2003 until no later than December 16, 2003. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: October 21, 2003

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (France) at (202) 482–3148, Cheryl Werner (Japan) at (202) 482–3208, or Fred Baker (Republic of Korea) at (202) 482–2924, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2003, the Department of Commerce (the Department) published a notice of initiation of these antidumping duty investigations covering the period from April 1, 2002 through March 31, 2003 (68 FR 38305). The notice of initiation stated that the Department would issue preliminary determinations no later than 140 days after the date of initiation. *See* 68 FR 38308. Presently, the preliminary determinations in these investigations are due on November 6, 2003.

Postponement of Preliminary Determinations

Pursuant to section 733(b)(1)(A) of the Act, the Department shall make a preliminary determination in an investigation of an antidumping duty order within 140 days after the date on which the Department initiates the investigation. The Act further provides, however, that the Department may extend the 140–day period to 190 days if the petitioner makes a timely request for an extension. On October 3, 2003, the petitioner made timely requests pursuant to 19 CFR 351.205(e) for 40–day postponements, pursuant to section 733(c)(1)(A) of the Act, of the preliminary determinations in these investigations. Petitioner stated that postponements of the preliminary determinations are necessary due to the complexity of the issues involved in these cases, such as model matching/product characteristics, and also the timing of the respondents' submissions and supplemental questionnaire responses.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiates an investigation. Therefore, in accordance with petitioner's requests for postponements, the Department is postponing the preliminary determinations in these investigations for 40 days for the reasons stated in petitioner's requests. These preliminary determinations will now be due no later than December 16, 2003.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26533 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090903C]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Survey in the Northwest Atlantic Ocean Near Bermuda

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

ACTION: Notice of extension of comment deadline.

SUMMARY: Under the Marine Mammal Protection Act (MMPA), on October 9, 2003, NMFS published a notice of receipt of an application for the harassment of marine mammals incidental to conducting an oceanographic survey in the Northwest Atlantic Ocean near Bermuda. By this document, NMFS announces an extension of the comment deadline.

DATES: Comments and information must be received no later than November 10, 2003.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

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

On October 9, 2003 (68 FR 58308), NMFS announced that it had received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in the Northwest Atlantic Ocean near Bermuda. Under the MMPA, NMFS requested comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of marine mammals for a limited period of time within the next year. By this document, NMFS extends the comment period on the application and its preliminary determination until November 10, 2003.

Dated: October 14, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–26548 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092203D]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Southeast Caribbean Sea and Adjacent Atlantic Ocean

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the Southeast Caribbean Sea and adjacent Atlantic Ocean. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than November 20, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines ''harassment'' as:

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

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On August 7, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Southeast Caribbean Sea and Adjacent Atlantic Ocean. The Southeast Caribbean Sea and Atlantic Ocean cruise will be off the coast of Venezuela in an area extending from 59° to 71° W and 10° to 15° N from January 11, 2004 to February 21, 2004. The operations will partly take place in the Exclusive Economic Zones (EEZ) of several nations in the Southeast Caribbean (including Venezuela, Aruba, Bonaire, Curacao, Trinidad, and Tobago) as well as in international waters.

The purpose of the project is to obtain information on island arc movements and geometry which can be used to better understand the history and mechanical processes by which island arcs accrete to continents, deeply buried rocks are exhumed, and folded belts and different types of sedimentary basins form along oblique collision zones. The interplay of the crust and subcrustal lithosphere during arc accretion and metamorphic belt exhumation and subduction polarity reverses will be examined. In addition, the flow patterns of the sublithospheric mantle beneath the plate boundary and northern South America as a whole and beneath the right lateral shear zone between them will be examined.

Description of the Activity

The seismic survey will involve two vessels which will conduct the seismic work. The source vessel, the *R/V Maurice Ewing*, will deploy an array of 20 airguns as an energy source, plus a 6–km (3.2 n.mi.) towed hydrophone streamer. A second vessel, the *R/V Seward Johnson*, will deploy and retrieve Ocean Bottom Seismometers (OBSs). As the airgun array is towed along the survey line, the towed hydrophone streamer or OBSs will receive the returning acoustic signals and transfer the data to the on-board processing system. Water depths within the study area range from approximately 15–6,000 m (49–19,685 ft). Most of the survey effort will take place in waters greater than 1,000 m (3,281 ft) deep, 2,031 km (1,097 n.mi.) will be surveyed in water depth ranging from 100–1,000 m (328–3,281 ft) deep, and a small portion of the survey effort will occur in shallow water less than 100 m (328 ft) deep.

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by LDEO in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed seismic surveys will use conventional seismic methodology with a towed airgun array as the energy source, and a towed hydrophone streamer and/or OBSs as the receiver system. The OBSs will be deployed by the *Seward Johnson*. The energy to the airgun array is compressed air supplied

by compressors on board the source vessel. In addition to the operations of the airgun array, a multibeam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey.

The *Seward Johnson* will have four deployments of OBSs, prior to the time when the *Maurice Ewing* conducts airgun operations in that area. After each line is shot, the *Seward Johnson* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Southeast Caribbean cruise, there will be four deployments of OBSs, one deployment along each of the OBS lines. OBSs will also be deployed at two other locations near each line to fill data gaps between islands.

In addition, the ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multibeam sonar. Both of these sound sources will be operated simultaneously with the airgun array. For more information regarding the Atlas Hydrosweep DS–2 multibeam bathymetric sonar, please refer to previous **Federal Register** Notices (68 FR 44291, July 28, 2003, and 68 FR 17773, April 11, 2003).

During the airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 sec (OBS lines) and approximately 20 sec (MCS lines). The 20 sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 20–airgun array will include airguns ranging in chamber volume from 80 to 850 in3. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft) across track by 9 m (30 ft) along track.

Along the selected lines, the OBSs will be positioned by the *Seward Johnson* prior to the time when the *Maurice Ewing* conducts airgun operations in that area. After each line is shot, the *Seward Johnson* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Southeast Caribbean cruse, there will be four deployments of OBSs, one deployment along each of the OBS lines. OBSs will also be deployed at two other locations near each line to fill data gaps between islands.

When airgun operations with the 20–gun array commence after a period without airgun operations, the number of guns firing will be increased gradually (''ramped up,'' also described as a ''soft start''). Operations will begin with the smallest gun in the array (80 in^3). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20–gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multibeam sonar. These sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and there are two deep-water modes: an Omni mode and a Rotational Directional Transmission mode (RDT). When water depth is less than 400 m (1312.3 ft), the source output is 210 dB re 1 μPa m rms and a single 1–millisec pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees athwartship. The beamwidth is measured to the -3 dB point, as is usually quoted for sonars. The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The RDT mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning and overall cross-track angular extent of about 140 degrees, with small gaps between the pulses for successive 30–degree segments. The total during of the ''ping,'' including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m (1640.5 ft) and 10 millisec in the deepest water. For each segment, ''ping'' duration is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The ''ping'' interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Southeast Caribbean Sea and its associated marine mammals can be found in a number of documents referenced in the LDEO application as well as in the LDEO application itself, and is not repeated here. In the Southeast Caribbean Sea and adjacent Atlantic Ocean, 30 marine mammal species are known to occur within the proposed study areas. Six species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, humpback, sei, fin, and blue whales, as well as West Indian manatees. These species included in this application are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), tucuxi (*Sotalia uviatilis*), bottlenose dolphin (*Tursiops truncatus*), Pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin

(*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Also, one species of pinniped could potentially be encountered during the proposed seismic surveys. This includes the hooded seal (*Cystophora cristata*). Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Potential Effects on Marine Mammals

The sound pressure fields for the 20–gun arrays has been modeled by LDEO, in relation to distance and direction from the airguns. Table 1 in the application (LDEO Caribbean 2003) shows the distances from the arrays where sound levels of ≥190, 180, 170, and 160 dB re 1 μPa (rms) are predicted to be received:

Airgun Array	*Predicted RMS Radii in meters/ft*			
	190 dB	180 dB	170 dB	160 dB
20 airguns	275/902	900/2953	2600/8531	9000/29,529

The rms (root-mean-squared) pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley *et al.* 1998, 2000a). The safety radii will be verified prior to the Southeast Caribbean cruise, using data from an acoustical measurement study in deep water within the Gulf of Mexico, which took place from 27 May to 3 June 2003. The data will either confirm or be used to refine the safety radii to be used during this and future LDEO seismic studies.

Previous applications from LDEO have described similar actions. Past **Federal Register** notices for LDEO include July 28, 2003 (68 FR 44291), August 26, 2003 (68 FR 51240), September 12, 2003 (68 FR 53714), and September 17, 2003 (68 FR 54421). The **Federal Register** notice on April 14, 2003 (68 FR 17909) describes, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. Possible effects of the sub-bottom profiler have been used in the projects described in the above notices. The LDEO Southeast Caribbean application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

Possible Effects of the Mid-Frequency Sonar Signals

A multibeam bathymetric sonar (Atlas Hydrosweep DS–2, 15.5–kHz) will be operated from a source vessel at some times during the planned study. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. Most of the energy in the sound pulses emitted by this multibeam sonar is at high frequencies, centered at 15.5 kHz. The beam is narrow (2.67°) in fore-aft extent, and wide (140°) in the cross-track angles. A marine mammal at depth near the trackline would be in the main beam for only one or two of the five segments. Further information on mid-frequency sonar can be found in the application or in a previous **Federal Register** notice 68 FR 17909 (April 14, 2003).

Possible Effects of the Sub-bottom Profiler Signals

Sound levels have not been measured for the sub-bottom profiler used by the *Maurice Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 μPa-m). The 160 and 180 dB re 1 μPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively, from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading. Further information on the sub-bottom profiler can be found in the application as well as in a previous **Federal Register** notice (68 FR 44291, July 28, 2003).

Estimates of Take by Harassment for the Southeast Caribbean Sea Cruise

All anticipated takes by harassment involve a temporary change in behavior. The mitigation measures to be applied will minimize the possibility of injurious takes. LDEO has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed seismic survey in the SE Caribbean Sea using data on marine mammal abundance from a previous survey region, as shown in the predicted RMS radii table.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, which is currently used as the criterion for the onset of level B harassment, by operations with the 20–gun array planned to be used for the project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array. It is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the multibeam sonar.

Tables 4 and 5 in the application explain the corrected density estimates as well as the ''best estimate'' of the numbers of each species that would be exposed to seismic sounds greater than 160 dB.

According to the tables, the percentages of delphinidae that might be exposed to sound levels greater than 160 dB range from zero to 4.4 percent. Aside from the sperm whale, the physeterida and ziphiidae exposure percentages are zero. The percent of sperm whales that might be exposed is 0.4 percent. Except for the humpback and blue whales, the mysticetes and pinnipeds percent of exposure is zero. It is estimated that 1.7 percent of humpback whales and 1.0 percent of blue whales could be exposed to sound levels greater than 160 dB. The ''best estimate'' of the numbers of common, bottlenose, Atlantic spotted, and pantropical spotted dolphins that might be harassed (exposed to levels greater than 160 dB) are 1.9 percent, 4.4 percent, 2.6 percent, and 4.3 percent, respectively.

The 160 dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive and delphinids generally

appear to be more tolerant of strong low-frequency sounds than are most baleen whales. As a result, significantly fewer odontocetes than estimated here are likely to be harassed by the proposed action.

Pinnipeds are not expected to be encountered in the SE Caribbean Sea and so the ''best estimate'' of the number that might be affected is zero. Although unlikely, a more conservative estimate of a maximum of five pinnipeds (most likely hooded seals) might be affected by a portion of the proposed survey in the SE Caribbean Sea. For further information regarding the estimated takes, refer to the LDEO Caribbean 2003 application.

Conclusions- Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans. The ''best estimate'' is that 377 humpback whales or about 1.7 percent of the North and South Atlantic populations will be exposed to sound levels greater than or equal to 160 dB re 1 μPa (rms). Acevedo and Smultea (1995) provide evidence that the North and South Atlantic populations overlap in their wintering areas. Similarly, only 52 sperm whales or approximately 0.4 percent of the North Atlantic sperm whale population would receive seismic sounds greater than or equal to 160 dB during the proposed survey in the SE Caribbean Sea.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes. A maximum of 2475, 2222, 1369, 867, and 564 common, bottlenose, Atlantic spotted, rough toothed, and pantropical spotted dolphins, respectively (the most abundant delphinids in the proposed survey area) are expected to be exposed to seismic sounds greater than or equal to 160 dB. This represents 1.9 to 4.4 percent of the North Atlantic populations of these species based on population estimates for these species. However, these dolphin species surveys have not been conducted for most of their range in the North Atlantic Ocean and adjacent waters. The true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are much less than 1.9–4.4 percent. The population sizes and the 1.9 to 4.4 percent are based on a small fraction of their range and their actual population sizes are actually much larger. The true percentages of the populations that might be exposed to seismic sounds greater than 160 dB are therefore much less than 1.9 to 4.4 percent. In light of all of these factors, the potential takings by Level B harassment are expected to have no more than a negligible impact on the affected species or stocks.

Mitigation measures such as controlled speed, course alteration, look-outs, non-pursuit, ramp-ups, and power-downs when marine mammals are seen within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions- Effects on Pinnipeds

Pinnipeds are not expected to be encountered during the proposed seismic survey in the SE Caribbean Sea. However, a more conservative estimate of a maximum of 5 pinnipeds may be affected by a portion of the proposed survey in the SE Caribbean Sea if they were encountered. If pinnipeds were encountered, the proposed seismic survey would have, at most, a short-term effect on their behavior and negligible impacts on the affected populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of ''Level B harassment.''

Mitigation

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to power-down the airguns if marine mammals are observed within the proposed safety radii, which will be verified prior to the southeast Caribbean cruise, using data from an acoustical measurement study in the Gulf of Mexico which took place May 27, 2003, through June 3, 2003. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in^3), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. Refer to LDEO's application for more detailed information about the mitigation measures that are an integral part of the planned activity.

Operational Mitigation

The directional nature of the 20–airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward. This directionality will result in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the nominal source level.

Marine Mammal Monitoring

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered-

down if marine mammals are observed in or about to enter the safety radii. If the airguns are ramped-up at night, two marine mammal observers will monitor marine mammals near the source vessel for 30 minutes prior to ramp-up using night vision devices.

Proposed Safety Radii

Received sound levels have been modeled for the 20–gun arrays. Based on the modeling, estimates of the 190-, 180-, 170- and 160–dB re 1 μPa (rms) distances for these arrays have been provided in the application. Airgun operations will be powered-down (or shut-down) immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate 180–dB (rms) or 190–dB (rms) safety radius, respectively. These 180- and 190–dB criteria are consistent with guidelines for onset of level A harassment of cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed Mid-Atlantic seismic surveys, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) power-down procedures; (3) shut-down procedures; and (4) ramp-up procedures.

Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones, where there is a possibility of Level A harassment.

Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Power-down Procedures

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. For the power-down procedure for the 20–gun array, one 80 in^3 airgun will be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety zone. An animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the zone for 15 min (small odontocetes, including delphinidae, and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

Shut-down Procedures

If a marine mammal is detected close to the airgun array during a power-down, modeled safety radii for a single gun will be maintained. If the 20–gun array is used, the single gun that will be firing is 80 in3. Since no calibrations have been done to confirm the modeled safety radii for this single gun, conservative (1.5 times the safety radius) radii will be used: 54 m (177 ft) for cetaceans, and 20 m (66 ft) for pinnipeds. If a marine mammal is seen within the appropriate safety radius of the array when the air guns have already been powered-down, airgun operations will be shut-down.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airgun arrays begin operating after a specified duration without airgun operations. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the Ewing was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a ''no shooting'' period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless one airgun has been maintained during the interruption of seismic activity.

Monitoring and Reporting

LDEO proposes to conduct the following marine mammal monitoring of its 2003 SE Caribbean Sea seismic program.

Vessel-based Visual Monitoring

At least two observers will be based aboard the vessel. At least one experienced marine mammal observer will be on duty aboard the seismic vessel, and observers will be appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. The second observer will also be on watch part of the time, including the 30–minute periods preceding startup of the airguns and during ramp-ups. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. LDEO bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during operations at night when designated observers will not be on duty.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are station on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will

be powered-down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. If the airguns are powered-down, observers will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius or until the specified intervals (15 or 30 min) have passed without a resighting.

If ramp-up procedures must be performed at night, two observers will be on duty 30 minutes prior to the start of airgun operations and during the subsequent ramp-up procedures. Ramp-up procedures for the 20–gun array will not commence at night unless the seismic source has been maintained.

Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The end of the Caribbean cruise is predicted to occur on approximately 21 February 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA. LDEO has initiated consultation with the U.S. Fish and Wildlife Service on West Indian Manatees.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Southeast Caribbean surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the Southeast Caribbean Sea and Adjacent Atlantic Ocean, off the coast of Venezuela, will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic surveys in the Southeast Caribbean Sea and Adjacent Atlantic Ocean, off the coast of Venezuela, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: October 14, 2003.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–26549 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel an Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 22, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Community and Family Policy/Educational Opportunities Directorate), ATTN: Mr. Otto Thomas, 4000 Defense Pentagon, Washington, DC 20301–4000).

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address or call at (703) 602–4949, ext. 160.

Title, Associated Form, and OMB Control Number: Department of Defense Public and Community Service (PACS) Program, DD Forms 2581 and 2581–1, OMB Number 0704–0324.

Needs and Uses: This information collection requirement is necessary to allow for the continued implementation of the Public and Community Service (PACS) Program. The PACS Program encourages eligible Service members to work in the public or community service arena upon separation from active duty. Employers with job openings in the public and community service arena will complete the one-time DD Form 2581, ''Operation Transition Employer Registration,'' to register in the PACS employer database. The DD Form 2581 and allows PACS employers to post employment opportunities on the Operation Transition Bulletin Board (TBB). Employers hiring separated Service members under the Temporary Early Retirement ACT (TERA) are

required to complete the DD Form 2581–1, ''Public and Community Service Organization Validation'' to be validated as a PACS employer. This validation allows TERA retirees, being hired by a PACS organization, to earn additional retirement credit needed towards gaining full retirement for 20 years of creditable service. Once the retiree reaches age 62 he/she will be compensated for retirement for 20 years of service. The information from the DD Form 2581–1 is also used by the Department of Defense to validate that the employer meets the criteria of a PACS organization.

Affected Public: Individuals or households; state, local, or tribal government, businesses or other for-profit, Federal government; not-for-profit institutions.

Annual Burden Hours: 2,870.

Number of Respondents: 287.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is needed to satisfy Public Law 101–510, the Defense Department's Fiscal Year 1991 Authorization Act, November 5, 1990, which directed the Secretary of Defense release to civilian employers, organizations and other appropriate entities, the names (and other pertinent information) of separating members of the Armed Forces, their spouses, and civilian employees who are seeking employment in the civilian sector. The collection is also required to satisfy Public Law 102–484, the Defense Department's Fiscal Year 1993 Authorization Act, October 23, 1992, which directed the Secretary of Defense to maintain a public and community service registry in which separating Service members would be encouraged to enter into employment in the public and community services arena. DD Form 2581, ''Operation Transition Employer Registration,'' and DD Form 2581–1, ''Public and Community Service Organization Validation,'' are used to support this effort.

Dated: October 14, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26440 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all commenters received by November 20, 2003.

Title, Form, and OMB Number: Application for Trusteeship; DD Form 2827; OMB Number 0730–0013.

Type of Request: Extension.

Number of Respondents: 75.

Annual Responses: 75.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 18.75.

Needs and Uses: When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of government funds and member's benefits.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 8, 2003.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26441 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (14 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 20, 2003.

Title, Form, and OMB Number: Trustee Report; DD Form 2826; OMB Number 01730–0012.

Type of Request: Extension.

Number of Respondents: 600.

Responses Per Respondent: 1.

Annual Responses: 600.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 300.

Needs and Uses: When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of government funds and member's benefits.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236. New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, CA 22202–4302;.

Dated: October 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26442 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Federal Acquisition Regulation; Information Collection; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0005).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning architect-engineer and related services questionnaire for specific project (SF 255). The clearance currently expires October 31, 2003. However, a request was submitted to extend this clearance until January 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 22, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 4.
Annual Responses: 20,000.
Hours Per Response: 1.2.
Total Burden Hours: 24,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: October 15, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–26443 Filed 10–20–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Federal Acquisition Regulation; Information Collection; Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0004).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning architect-engineer and related services questionnaire (SF 254). The clearance currently expires on October 31, 2003. However, a request was submitted to extend this clearance until January 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 22, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541—544 by firms wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 7.
Total Responses: 35,000.
Hours Per Response: 1.
Total Burden Hours: 35,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035,

1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: October 15, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–26444 Filed 10–20–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 4–5, 2004; May 12–13, 2004; and October 20–21, 2004, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26491 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Technology Investment for the Defense Advanced Research Projects Agency (DARPA) on October 20–21, 2003, in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will conduct a one-time evaluation of DARPA's current technology portfolio to confirm that DARPA has advanced research projects based on sound, proven scientific and technological foundations, practices and methods that are of high value to the Department of Defense's operational missions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the meeting.

Dated: October 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26492 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 20, 2003.

ADDRESSES: Written comments and recommendation on the proposed information collection should be sent to United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to above address, or call the United States Air Force Academy, Office of Admissions, (719) 333–7291.

Title, Associated Form, and OMB Number: Air Force Academy Secondary School Transcript, USAF Form 148, OMB Number 0701–0066.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4,000.

Number of Respondents: 7,500.

Responses per Respondent: 1.

Average Burden per Response: 30 Minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be

considered for admittance to the Air Force Academy.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–26339 Filed 10–20–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. and Foreign Patents and Patent Applications Concerning Indolo [2,1-B] Quinazole-6,12-Dione Antimalarial Compounds and Methods of Treating Malaria

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6 and 404.7, announcement is made of the availability for licensing of inventions set forth in the following, related patent applications:

1. *Title:* Indolo [2,1-B] Quinazole-6, 12-Dione Antimalarial Compounds and Methods of Treating Malaria.

U.S. Patent No.: 6,531,487.

Issued: March 11, 2003.

2. *Title:* Indolo [2,1-B] Quinazole-6, 12-Dione Antimalarial Compounds and Methods.

U.S. Patent No.: 6,284,772.

Issued: September 28, 1999.

Foreign rights are also available. The United States Government, as represented by the Secretary of the Army, has rights in these inventions.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Applications, (301) 619–6664, both at telefax (301) 619–5034.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–26431 Filed 10–20–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license for the U.S. Patents listed below to New England Ropes, Inc. with its principal place of business at 848 Airport road, Fall River, Massachusetts 02720.

DATES: File written objections by November 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The exclusive licenses may be granted, unless within fifteen (15) days from the date of this published notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 the following Titles, Patent Numbers, and Issue dates are provided:

1. *Title:* Harness for Human Wear; *Patent No.* 6, 189,651; *Issue Date:* February 20, 2001.

2. *Title:* Harness for Human Wear; *Patent No.* 5,857,540; *Issue Date:* January 12, 1999.

3. *Title:* Rappel Tool for Descent of a Load and Rappel Tool and Stirrup Assembly for Ascent Along a Rappel Rope; *Patent No.* 6,095,282; *Issue Date:* August 1, 2000.

4. *Title:* Rappel Rope Storage and Deployment System; *Patent No.* 5,868,219; *Issue Date:* February 9, 1999.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–26432 Filed 10–20–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a General Reevaluation Report and Draft Environmental Impact Statement for the Atlantic Coast of Maryland Shoreline Protection Project, Ocean City, MD

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers (USACE), will conduct a General Reevaluation Report (GRR) and Draft Environmental Impact Statement (DEIS) to evaluate new sand borrow areas for the continued beach replenishment at Ocean City, Maryland, and potential modifications to the existing project to better protect Ocean City at areas of high erosion.

The Atlantic Coast of Maryland Shoreline Protection Project, Ocean City, Maryland, is designed to provide coastal flood and erosion protection to Ocean City. As part of the project design, periodic renourishment and maintenance of the beach are required to maintain the design level of protection. Every four years, approximately 800,000 cubic yards of sand are required to renourish and maintain the beaches. The original feasibility report identified borrow areas that will be consumed within the next eight years (two beach renourishment cycles) or less, assuming no extreme storm events. Estimates show that approximately 10–12 million cubic yards of sand are needed to maintain the four-year cycles for the remaining project life. The District proposes to analyze, evaluate, and select the best site(s) for additional borrow material.

In addition, the project has experienced three persistent areas of erosion, or hot spots, that have required significant amounts of sand renourishment since the project's inception. These areas, centered on 32nd Street, 81st Street, and 146th Street have been examined in the past, and several potential cost-effective solutions were identified. The second purpose of this reevaluation study and resulting GRR is to analyze, evaluate, and select the best alternative to reduce maintenance costs for two of the three areas. The area at 146th Street has been addressed by the Corps' Philadelphia District's Fenwick Island, Delaware, Interim Feasibility Study—Final Integrated Feasibility Report and Environmental Impact Statement.

The study will be conducted in compliance with Section 404 and Section 401 of the Clean Water Act, Section 7 of the Endangered Species Act, the Clean Air Act, the U.S. Fish and Wildlife Coordination Act, Section 106 of the National Historic Preservation Act, Prime and Unique Farmlands, the Magnuson-Stevens Fishery Conservation and Management Act, and National Pollutant Discharge Elimination System Act. All appropriate documentation (*i.e.,* Section 7, Section 106 coordination letters, and public and

agency comments) will be obtained and included as part of the Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Mr. Harold K. Clingerman, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, 10 South Howard Street, P.O. Box 1715, Baltimore, MD, 21203–1715, telephone 410–962–2650; e-mail address: *harold.k.clingerman@usace.army.mil*

SUPPLEMENTARY INFORMATION: 1. In September 1991 construction of the shoreline protection features of the project were essentially complete and the project was dedicated on October 30, 1991. The project consists of widening and raising the beach from 4th street to the Maryland-Delaware line (about 8.2 miles) and a 0.3 mile transition into Delaware, construction of a steel sheetpile bulkhead from 4th street to the north end of the boardwalk at 28th Street (about 1.5 miles), construction of a sand dune from the north end of the boardwalk to the Maryland-Delaware line (about 6.7 miles plus a 0.3 mile transition into Delaware), and project operation and maintenance (non-Federal cost). The long-term features of the project include monitoring and renourishment (cost shared 53%/47%) over an economic life of 50 years. Maintenance of the dune and berm above +6 feet NGVD is the financial responsibility of the non-Federal sponsor.

2. As part of the EIS process, recommendations of borrow areas and project modifications will be based on an evaluation of the probable impact of the proposed activity on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefit, which may reasonably be expected to accrue from the proposal, will be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, among these are: Fish and wildlife resources; cultural resources; land use; water and air quality; hazardous, toxic, and radioactive substances; threatened and endangered species; regional geology; aesthetics; environmental justice; and the general needs and welfare of the public.

3. The DEIS for the GRR is expected for public release in late 2004.

Wesley E. Coleman, Jr.,

Chief, Civil Project Development Branch.

[FR Doc. 03–26434 Filed 10–20–03; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting. The meeting is open to the public.

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: November 6, 2003.

Location: Crowne Plaza Hotel—Old Mill, 655 N. 108 Avenue, Omaha, NE 68154, (402) 496–0850.

Time: 8:30 a.m. to 12 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Edwards, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: (202) 761–4559.

SUPPLEMENTARY INFORMATION: The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. The EAB will visit many locations on the Missouri River prior to the meeting to gain a better perspective of the issues of national significance associated with that river system. The public meeting, however, will focus on the generic issue of independent science review. The intent of this meeting is to present an opportunity for the Chief of Engineers to receive the views of his EAB. Time will be provided, however, for public comment. Each speaker will be limited to no more than three minutes in order to accommodate as many people as possible within the limited time available. If you wish to receive electronic notice of future meetings you may subscribe to a list server at: *http://www.usace.army.mil/inet/functions/cw/hot_topics/eab.htm.*

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–26433 Filed 10–20–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 15, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Reading First Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 55.
Burden Hours: 1,100.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading First statute.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2329. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26452 Filed 10–20–03; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Certification of the Radiological Condition of the Ventron Site in Beverly, MA

AGENCY: Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed remedial actions to decontaminate the Ventron site in Beverly, Massachusetts. This property formerly was found to contain quantities of radioactive material from activities conducted for the Manhattan Engineer District (MED) (and its successor the Atomic Energy Commission (AEC)) from 1942 to 1948. Based on the analysis of all data collected, DOE has concluded that the property is in compliance with DOE radiological decontamination criteria and standards and that no radiological restrictions on the use of the property are required.

ADDRESSES: The certification docket is available at the following locations:

U.S. Department of Energy, Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37831.

Beverly Public Library, 32 Essex Street, Beverly, Massachusetts 01915.

FOR FURTHER INFORMATION, CONTACT: Donald Mackenzie, Health Physicist, U.S. Department of Energy, Ohio Office, Office of Site Closure, EM–31/Cloverleaf Building, 1000 Independence Avenue, SW., Washington, DC 20585–2040, Phone: (301) 903–7426, Fax: (301) 903–2385.

SUPPLEMENTARY INFORMATION: The U.S. DOE, Oak Ridge Operations Office (OR), Office of Environmental Management, has conducted remedial action at the Ventron site in Beverly, Massachusetts, under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and remediate, or otherwise control, sites where residual radioactive contamination remains from activities carried out under contract to the MED/AEC during the early years of the nation's atomic energy program.

In October 1997, the Energy and Water Appropriations Act, 1998 transferred responsibility for management of FUSRAP to the U.S. Army Corps of Engineers (US ACE). Completion of the certification process was delayed pending preparation of a Memorandum of Understanding (MOU) between DOE and U.S. ACE with regard to completed, remediated sites such as the Ventron property. The MOU between the U.S. DOE and the U.S. ACE regarding Program Administration and Execution of the FUSRAP was signed by the parties in March 1999. Funding to proceed with the completion of DOE closure documentation for several FUSRAP sites, including the Ventron site, was obtained from U.S. ACE in late 2000. The closure documentation for these sites will document the cleanup and inform the public of their successful decontamination of radioactive contamination.

From 1942 to 1948, the Metal Hydrides Corporation (predecessor to the Ventron Corporation) conducted natural uranium processing operations under contract to the MED and its successor, the AEC. The MED/AEC contract operations at the Ventron site involved conversion of uranium oxide to uranium metal powder using calcium hydride. In a process used later at the facility, uranium oxide was reacted with hydrogen fluoride to produce uranium tetrafluoride, which was mixed with magnesium and heated to produce uranium metal. Other operations at the site involved recovery of uranium from scrap and turnings resulting from operations at a fuel fabrication plant in Hanford, Washington. Uranium-238 was identified as the primary contaminant of concern associated with MED/AEC activities. Two of the original buildings, which housed foundry facilities, were demolished between 1948 and 1950 (after completion of AEC surveying and decommissioning), and two other buildings (Buildings B and F) were erected at these locations. The remaining original buildings (Buildings A and A–1) contained furnaces, leaching facilities, a mixing room, a drying room, and analytical laboratories. The Alfa Building was used in later non-MED-related thorium operations, reportedly involving purification of thorium compounds. The primary radioactive contaminant resulting from this work was thorium-232.

In 1965, Metal Hydrides Corporation became the Ventron Corporation, which was acquired by the Thiokol Corporation in late 1976. In 1980, Ventron became a division of Morton Thiokol, Incorporated (renamed Morton International in 1990). The site was designated for remedial action under FUSRAP in 1986.

Site characterization was performed in 1992 using the Streamlined Approach for Environmental Restoration method, an expedited approach developed by DOE to quickly and efficiently conduct remedial investigations/feasibility studies at DOE facilities. This approach indicated several areas of contamination.

Primary radioactive contaminants were uranium-238, thorium-232, and radium-226. Residual radioactive contamination (primarily uranium) was identified in soil and in fill, material beneath four buildings, and elevated surface contamination was found in Buildings A and A–1. A Memorandum of Agreement (MOA) signed by DOE and Morton International in 1996 provided that FUSRAP would decontaminate all buildings containing radioactivity above DOE Order 5400.5 guidelines in effect at the time (whether of government or non-government origin) and that Morton would demolish the buildings.

Before remedial action began, the site was surveyed to delineate boundaries of radioactive contamination, supplement existing characterization information, and obtain radiological and chemical data needed to classify the waste generated during cleanup. Waste profile information was necessary to establish acceptability of the various waste streams at the Envirocare of Utah low-

level radioactive waste disposal facility in Clive, Utah. Cleanup activities were conducted in full compliance with applicable Federal and State waste management and transportation requirements.

Radiological decontamination of the Ventron site by the DOE occurred in two phases: In September 1995, and from May 1996 to March 1997. Supplemental sampling of the site to verify the adequacy of radiological remediation was performed in July 1997.

In September 1995, the first phase of DOE remediation of site tidal flats (harbor) adjacent to the seawall began. During this first phase of remediation, a walkover was performed over the entire harbor down to the low-tide mark, and areas with elevated levels of radioactive materials were targeted for remediation. Elevated readings were found in three areas. Excavations were completed in the first two areas, and post-remedial action samples were collected. Excavation was halted in the third area because contamination in that area was too extensive to be removed by manual methods. During the second phase of the remedial action, this third area was remediated and post-remedial action samples were collected.

Pursuant to the MOA between DOE and Morton International, several onsite buildings were demolished and the crushed building rubble was sampled. Rubble meeting DOE guidelines contained in DOE Order 5400.5 was stockpiled and used as backfill along the seawall. Building slabs were surveyed and either decontaminated and left in place or removed and disposed of with other contaminated material.

Excavation of contaminated materials was the primary remedial action technique used at the Ventron site. Eleven discrete areas of the site were excavated and verified for compliance with radiological cleanup criteria. Excavations occurred beneath demolished buildings, in the northwest corner of the site, and in the harbor area.

Post-remedial action surveys conducted in 1996 and 1997 have demonstrated, and DOE has certified, that the subject property is in compliance with DOE radiological decontamination criteria and standards in effect at the conclusion of remedial action. These criteria and standards are established to protect members of the general public and occupants of the site and to ensure that reasonably foreseeable future use of the site will result in no radiological exposure above applicable guidelines. Accordingly, this property is released from the FUSRAP program. These findings are supported by the DOE's Certification Docket for the Remedial Action Performed at the Ventron site in Beverly, Massachusetts. DOE makes no representation regarding the condition of the site as a result of activities conducted subsequent to DOE's post-remedial action surveys.

The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except Federal holidays), in the DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies of the certification docket will also be available in the DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37831, and the Beverly Public Library, 32 Essex Street, Beverly, Massachusetts, 01915.

The DOE, through the Office Director, Ohio Office (EM–31), Deputy Assistant Secretary for Office of Site Closure (EM–30), the Assistant Secretary for the Office Environmental Management (EM), has issued the following statement:

Statement of Certification: Ventron Site in Beverly, Massachusetts

The DOE, Oak Ridge Operations Office (OR), Office of Environmental Management, Oak Ridge Reservation, Remediation Management Group, and the U.S. DOE Office of Environmental Management (EM), Office of Site Closure (EM–30), Ohio Office (EM–31), has reviewed and analyzed the radiological data obtained following remedial action at the Ventron site in Beverly, Massachusetts, (Deed Book 10091, Page 339, in the records of Essex County, Massachusetts). Based on the analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination remaining onsite at the time remedial actions were completed falls within DOE radiological decontamination criteria and standards for use of the property without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the site will result in no radiological exposure above DOE radiological criteria and standards for protecting members of the general public and occupants of the property.

Property owned by: Morton International, Incorporated, 123 North Wacker Drive, Chicago, Illinois, 60606.

Issued in Germantown, Maryland.

Sally A. Robison,

Office Director, Ohio Office, Office of Site Closure.

[FR Doc. 03–26517 Filed 10–20–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Petroleum Supply Reporting System surveys to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by November 20, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bill Nickerson, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*William_Nickerson@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at 202–395–7151 (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation

(*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. The Petroleum Supply Reporting System includes the following surveys:

EIA–800, Weekly Refinery and Fractionator Report (previously Weekly Refinery Report),
EIA–801, Weekly Bulk Terminal Report,
EIA–802, Weekly Product Pipeline Report,
EIA–803, Weekly Crude Oil Stocks Report,
EIA–804, Weekly Imports Report,
EIA–810, Monthly Refinery Report,
EIA–811, Monthly Bulk Terminal Report,
EIA–812, Monthly Product Pipeline Report,
EIA–813, Monthly Crude Oil Report,
EIA–814, Monthly Imports Report,
EIA–816, Monthly Natural Gas Liquids Report,
EIA–817, Monthly Tanker and Barge Movement Report,
EIA–819, Monthly Oxygenate Report, (previously EIA–819M, Monthly Oxygenate Telephone Report), and
EIA–820, Annual Refinery Report.

New Surveys Proposed

EIA–805, Weekly Terminal Blenders Report
EIA–815, Monthly Terminal Blenders Report

2. Energy Information Administration.
3. OMB Number 1905–0165.
4. Revision.
5. Mandatory.
6. EIA's Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.
7. Business or other for profit; Federal Government; and State, Local or Tribal Government.
8. 83,289 hours (2,590 respondents times 19.37 responses per year times 1.66 hours per response).

The Office of Oil and Gas has made minor modifications subsequent to those proposed in the FR notice for public comments. These additional changes are based upon comments received in response to the FR notice, along with changes in the industry.

These new changes are:

(1) EIA–819—delete the ''isobutylene'' category from the motor gasoline blending component production

(2) EIA–811—Add the category ''unfinished oils'' with the following subcategories:

a. Naphthas and Lighter

b. Kerosene and Light Gas Oils

c. Heavy Gas Oils

d. Residuum

(3) EIA–803 and EIA–813—Add a line for crude oil stocks at Cushing, Oklahoma

(4) EIA–811—Collect the volumes of ultra-low sulfur distillate fuel oil (15 ppm and under) downgraded at bulk terminals *by PAD District.* Downgraded volumes include motor vehicle diesel fuel that was designated as meeting the 15 ppm sulfur standard when it was produced or imported but was later commingled with motor vehicle diesel fuel meeting the 500 ppm sulfur standard. Downgrading of motor vehicle diesel fuel meeting the 15 ppm sulfur standard may occur because the fuel became mixed with higher-sulfur product in pipelines (*i.e.* pipeline interface/transmix) or because sulfur was picked up at other points in the petroleum distribution system (*e.g.* tanks, valves, manifolds) causing the fuel to exceed the 15 ppm sulfur standard.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, October 15, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–26518 Filed 10–20–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0070; FRL–7574–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; the SunWise School Program, EPA ICR Number 1904.02, OMB Control Number 2060–0439

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0070, to (1) EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kristin Kenausis, Office of Atmospheric Programs, Global Programs Division, Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2289; fax number: (202) 565–2095; email address: *kenausis.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 21, 2003 (68 *FR* 27796), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0070, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air 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 listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's Federal Register notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: The SunWise School Program.

Abstract: The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; and (2) Teacher questionnaire for measuring their receptivity to the educational component of the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. In addition, educators are asked to fill out a registration form to receive a tool kit. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and 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 OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes per response for the registration and 20 minutes per response for the two surveys. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are elementary and middle school students and teachers.

Estimated Number of Respondents: 5,500.

Frequency of Response: Annually for teachers; semi-annually for students.

Estimated Total Annual Hour Burden: 1,833.

Estimated Total Annual Cost: $59,583, which includes $0 capital/startup and O&M costs and $59,583 labor costs.

Changes in the Estimates: There is an increase in the number of teachers who we predict will register for the program annually (from 1,000 to 3,000).

Dated: September 30, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–26543 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7576–9]

Science Advisory Board Staff Office; Change to an Earlier Meeting Notice: Advisory Council on Clean Air Compliance Analysis; Notification of Postponement of a Public Meeting and Public Teleconference for the Air Quality Modeling Subcommittee and Change in Date and Time for the Health Effects Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency, Science Advisory Board (SAB) Staff Office, published a document in the **Federal Register** (October 7, 2003, 68 FR 57890–57891) announcing a public meeting for the Council's Air Quality Modeling Subcommittee (AQMS) and several public teleconferences, including public teleconferences for the Council's Health Effects Subcommittee (HES) and the AQMS. The Staff Office is now announcing that the AQMS meeting and teleconference are postponed to a date and time to be identified and is also announcing a change in the date and time of the HES teleconference.

DATES: October 30, 2003. A public teleconference for the Health Effects Subcommittee (HES) will be held from 12 p.m. to 2 p.m. (Eastern Time).

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 HES 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 by e-mail at *nugent.angela@epa.gov.*

Dated: October 15, 2003.

Vanessa T. Vu,

Director, Science Advisory Board Staff Office.

[FR Doc. 03–26538 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7576–7]

Expert Peer Review of Natural Gas Supply Curves and Associated Assumptions as Used in the Integrated Planning Model (IPM); Notification of Panel Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA announces an expert peer review panel meeting on the natural gas supply curves and associated assumptions developed for EPA by ICF Consulting, Inc. for use in EPA applications of ICF's Integrated Planning Model (IPM). In accordance with provisions in EPA's Peer Review Handbook (EPA 100–B–00–001), the meeting is being conducted by a third party EPA contractor, Perrin Quarles Associates, Inc. The meeting of the peer review panel is open to the public. The public may submit written comments for review by EPA up to two weeks after the date of the meeting, and EPA will consider those comments in conjunction with the input from the peer review panel. Time permitting, there may be a limited opportunity for oral comments from the public before the panel at the end of the first day's session. General information about the IPM, the natural gas supply curves and associated assumptions, and the use of IPM by EPA can be found at *http://www.epa.gov/airmarkets/epa-ipm/.*

DATES: The peer review will be held in two sessions. The first, on October 23, 2003, will begin at 9 a.m. and conclude no later than 6 p.m. (eastern time), and the second, on October 24, 2003, will begin at 9 a.m. and conclude no later than 2 p.m. (eastern time).

ADDRESSES: The peer review will be held at the Phoenix Park Hotel, 520 North Capitol St., NW., Washington, DC. Written comments can be sent by mail to Mr. Brian Menard, Perrin Quarles Associates, Inc., 675 Peter Jefferson Parkway, Suite 200, Charlottesville, VA 22911 or by email to *bpm@pqa.com.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to address the peer review panel during the public input period at the end of the first day's session should contact Mr. Brian Menard, Perrin Quarles Associates, Inc., at telephone: (434) 979–3700, or via e-mail at: *bpm@pqa.com* prior to the meeting. Written comments (preferably via email) should be sent to Mr. Menard within two weeks after the meeting. EPA will consider any comments received in that timeframe. Questions about the IPM and EPA's use of the IPM should be directed to Mr. Elliot Lieberman, EPA, at telephone/voice mail: (202) 564–9136, or via e-mail at: *Lieberman.Elliot@epa.gov.*

Dated: October 14, 2003.

Sam Napolitano,

Acting Division Director, Clean Air Markets Division, Office of Atmospheric Programs.

[FR Doc. 03–26539 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7576–5]

Crimson Resource Management—Administrative Complaint Consent Agreement and Final Order—Notice of Proposed Administrative Consent Agreement and Final Order Pursuant to Section 311(b)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 311(b)(6)(C) of the Clean Water Act, (''CWA''), 33 U.S.C. 1321(b)(6)(C), notice is hereby given of a proposed Complaint, Consent Agreement and Final Order (''CCA/FO,'' Region 9 Docket No. OPA 9–2003–0003), which resolves penalties for alleged violations of sections 311(b)(3) and 311(j) of the CWA. The respondent to the CCA/FO is Crimson Resource Management Corp. Through the proposed CCA/FO, Crimson Resource Management Corp. will pay $30,000 to the Oil Spill Liability Trust Fund as a penalty for alleged violations involving the discharge of oil into waters of the United States, and the failure to prepare and maintain a Spill Prevention, Control and Countermeasure plan. The penalty included in this CCA/FO was calculated in accordance with the Agency's guidance document, Civil Penalty Policy for Section 311(b)(3) and section 311(j) of the Clean Water Act, dated August 21, 1998. For forty (40) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed CCA/FO. Any person who comments on the proposed CCA/FO shall be given notice of any hearing held and a reasonable opportunity to be heard and to present evidence. If no hearing is held regarding comments received, any person commenting on this proposed CCA/FO may, within 40 days after the issuance of the final order, petition the Agency to set aside the CCA/FO, as provided by section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. 1321(b)(6)(C)(iii).

DATES: Comments must be submitted on or before December 1, 2003.

ADDRESSES: The proposed CCA/FO may be obtained from Laurie Williams, telephone (415) 972–3867. Comments regarding the proposed CCA/FO should be addressed to Danielle Carr (ORC–1) at 75 Hawthorne Street, San Francisco, California 94105, and should reference Crimson Resource Management Corp. and Region 9 Docket No. OPA 9–2003–0007.

FOR FURTHER INFORMATION CONTACT: Laurie Williams (ORC–3), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3867.

Dated: September 26, 2003.

Keith Takata,

Director, Superfund Division, Region 9.

[FR Doc. 03–26544 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7576–4]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the Shapell Monteverde Partnership Plum Canyon Development Site, Proceeding Under Clean Water Act Section 309(g)(1), (2)(B) and 40 CFR 22.13(b)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the

Clean Water Act (the ''Act''). EPA is also providing notice of opportunity to comment on the proposed assessment.

EPA is authorized under Section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated Sections 301(a) or Section 308(a) of the Act, 33 U.S.C. 1311(a), 1318(a), including any person who has violated any permit condition or limitation, may be assessed a penalty in a ''Class II'' administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits'' (''Part 22''), 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is forty (40) days after publication of this notice.

On September 30, 2003, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Administrative Complaint: *In the Matter of Shapell Monteverde Partnership, Plum Canyon Development Site, Docket No. CWA–9–2003–0005.* For the alleged violations set forth in the Administrative Complaint, EPA proposes to assess penalties of up to One Hundred Thirty-seven Thousand and Five Hundred Dollars ($137,500) for violations of NPDES Permit No. CAS000002 and Sections 301(a) and Section 308 of the Act, 33 U.S.C. 1311(a), 1318(a) at the Plum Canyon Development Site in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this notice.

Dated: September 30, 2003.

Alexis Strauss,

Director, Water Division.

[FR Doc. 03–26545 Filed 10–20–03; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Draft Strategic Plan for Fiscal Years 2004–2009

AGENCY: Farm Credit Administration.

ACTION: Notice of availability; request for comment.

SUMMARY: This notice announces the availability of the Farm Credit Administration's (FCA or agency) Draft Strategic Plan for Fiscal Years 2004–2009. The Government Performance and Results Act of 1993 requires that Federal agencies update their strategic plans at least every 3 years and, in doing so, solicit the views and suggestions of those entities potentially affected by or interested in the plan. Therefore, the agency is interested in receiving comments on our draft strategic plan.

DATES: Comments must be submitted by November 20, 2003.

ADDRESSES: The draft strategic plan is available on the agency's Web site at *http://www.fca.gov.* You can provide your comments to us electronically via e-mail at *info-line@fca.gov.* You can also send written comments or requests for a hard copy of the plan to the Farm Credit Administration, Office of the Chief Operating Officer, Attention: Strategic Plan Coordinator, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 790–5241.

FOR FURTHER INFORMATION CONTACT: Jeff Walker, Executive Assistant, Office of the Chief Operating Officer, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4271; TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA or agency) is charged by Congress, as established in title V of the Farm Credit Act of 1971, as amended, with the mandate of overseeing the agricultural Government-sponsored enterprises (GSEs) serving rural America. These include the Farm Credit System (System) and the Federal Agricultural Mortgage Corporation. FCA also has statutory responsibility to examine the National Consumer Cooperative Bank, a non-System entity operating as a federally chartered, privately owned banking corporation.

The Government Performance and Results Act of 1993 (GPRA) requires that each Federal agency establish a strategic plan that covers a period of not less than 5 years. It also mandates that these plans be updated and revised at least every 3 years. In accordance with GPRA, FCA issued its first strategic plan in 1997. A revised plan was approved in 2000. Thus, the Draft Strategic Plan for Fiscal Years 2004–2009 represents the second update to the agency's original strategic plan completed under GPRA. The draft strategic plan describes our mission, our strategic goals, and strategies to achieve those goals over the next 5 years.

The Draft Strategic Plan for Fiscal Years 2004–2009 is the culmination of an extensive outreach effort. The FCA Board began its work on this plan in April 2003 by initiating a series of strategic planning sessions to seek input from farmers, the Farm Credit Council and other Farm Credit System representatives, academics and economists, the American Bankers Association, the Independent Community Bankers of America, former FCA Board chairmen and FCA senior management. Subsequent planning sessions held by the Board and the Office of the Chief Operating Officer over the next several months were used to establish specific direction for formulation of the current draft. Senior management provided input throughout the drafting phase.

Having formulated a draft strategic plan, at this point FCA wants to return our product to our external public for review. We anticipate posting the final strategic plan on the Internet in December 2003.

Dated: October 16, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–26497 Filed 10–20–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 7, 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 20, 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: 3060–0110.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S.

Form Number: FCC 303–S.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 3,217.

Estimated Time per Response: 1.0 hours (avg.).

Frequency of Response: Reporting once every 8 years; third party disclosure.

Total Annual Burden: 5,271 hours.

Total Annual Costs: $1,567,401.

Needs and Uses: FCC Form 303–S is used in applying for renewal of a license for a commercial or non-commercial AM, FM, or TV broadcast station and FM translator, TV translator, or low power TV (LPTV), or low power FM broadcast station. It can also be use to seek the joint renewal of licenses for an FM or TV translator station and its co-owed primary FM, TV, or LPTV station. The FCC has recently made two new statutory changes—47 U.S.C. 312(g), which provides for automatic expiration of a license if the licensee does not broadcast (''goes silent'') for twelve months; and 47 U.S.C. 309(k), which affects renewal standards and FCC violations. The Commission is also revising Form 303–S to make it a simpler and clearer form that shifts to a convenient certification-based approach to applicants. Furthermore, the Commission is changing this form in line with the release on November 20, 2002 of the Second Report and Order and FNPRM, *Review of the Commission's Broadcast and Cable Equal Employment Opportunities Rules and Policies*, MM Docket No. 98–204, FCC 02–303.

OMB Number: 3060–0342.

Title: Section 74.1284, Rebroadcasts.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total annual burden: 100 hours.

Total annual costs: $0.00.

Needs and Uses: 47 CFR section 74.1284 requires that the licensee of an FM translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and certify that written consent has been received from the licensee of that station whose programs are retransmitted. The FCC staff uses the data to update records and to assure compliance with FCC rules and regulations.

OMB Control Number: 3060–0331.

Title: Aeronautical Frequency Notification, FCC Form 321.

Form Number: FCC 321.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,855.

Estimated Time per Response: 40 minutes.

Frequency of Response: One-time and on occasion reporting requirements.

Total Annual Burden: 1,237 hours.

Total Annual Costs: $92,750.

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 76.1804 of the FCC rules, an MVPD must file FCC Form 321 prior to commencing operation in the aeronautical frequency bands at an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system. In addition, this form must be filed prior to transmitting on any new frequency or frequencies in the aeronautical radio frequency bands. This form will replace the requirement that an MVPD send a letter containing approximately the same information. It should reduce the burden on respondents by clarifying the exact information they need to send and by providing a consistent format for the information.

OMB Control Number: 3060–0611.

Title: Section 74.783, Station Identification.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 400.

Estimated Time per Response: 0.166 hours.

Total Annual Burden: 66 hours.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR section 74.783(e) permits any low power

television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. LPTV respondents are required to use the on-line electronic system. To enable these respondents to use this on-line system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed. (All burden associated with call sign requests for the on-line reservation and authorization system are included in information collection 3060–0188.) 47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or service representative to be contacted in the event of malfunction of the translator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26240 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[RM–10803; DA 03–3226]

Broadcasters' Service to Their Local Communities

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: The Federal Communications Commission will hold a Localism Task Force hearing in Charlotte, North Carolina, on October 22, 2003, on localism in the broadcast industry. The purpose of the hearing is to gather information from a variety of sources, including consumers, industry, and civic organizations on broadcasters' service to their local communities.

DATES: The hearing will be held on Wednesday, October 22, 2003, from 5:30 p.m. to 8:45 p.m.

ADDRESSES: The hearing will be held at the Charlotte-Mecklenberg Government Meeting Chamber, located at 600 East Fourth Street, Charlotte, NC 28203.

FOR FURTHER INFORMATION CONTACT: Eric Bash, 202–418–1188.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) will hold a Localism Task Force hearing on the subject of localism, to be held on October 22, 2003, in Charlotte, North Carolina. Several FCC Commissioners will preside. The hearing is open to the public, and seating will be available on a first-come, first-served basis. The purpose of the hearing is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities. The Charlotte hearing will begin with a number of invited guests and panelists making brief introductory remarks. The Commissioners will then have an opportunity to ask the panelists questions or comment on the subject of localism, and the public will be afforded an opportunity to register their views.

2. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Please include a description of the accommodation needed, providing as much detail as you can, as well as contact information in case additional information is needed. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fulfill. Please send a request by e-mail to *fcc504@fcc.gov*, or call the Consumer & Governmental Affairs Bureau. For sign language interpreters, CART, and other reasonable accommodations, call 202–418–0530 (voice) or 202–418–0432 (TTY). For accessible format material (Braille, large print, electronic files, and audio format), call 202–418–0531 (voice) or 202–418–7365 (TTY).

3. The hearing will be recorded, and the record will be available to the public. The public may also file comments or other documents with the Commission. Filing instructions are provided at *http://hraunfoss.fcc.gov/edocs.public/attachmatch/DOC-239578A1.doc*.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–26617 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of a meeting of the Media Security and Reliability Council (Council). The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Tuesday, March 2, 2004 at 10 a.m. to 11:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman at 202–418–1600 or TTY 202–418–7172.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would enhance the security and reliability of media facilities and services.

The Council will receive final reports and recommendations from its working groups. The Council may also discuss such other matters as come before it at the meeting.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by e-mail (*bkreisma@fcc.gov*) or U.S. mail (2–A666, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/.*

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–26504 Filed 10–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Milton Allen Shields, III, La Feria, Texas; to acquire an option to purchase shares of the outstanding common stock of Alamo Corporation of Texas, Alamo, Texas, and thereby indirectly acquire shares of Alamo Bank of Texas, Alamo, Texas.

Board of Governors of the Federal Reserve System, October 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26552 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03-25676) published on page 58683 of the issue for Friday, October 10, 2003.

Under the Federal Reserve Bank of Dallas heading, the entry for Tradition Bancshares, Inc., Houston, Texas, is revised to read as follows:

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Tradition Bancshares, Inc., Houston, Texas; to acquire 30.89 percent of the voting shares of Katy Bank, N.A., Katy, Texas.

Comments on this application must be received by November 3, 2003.

Board of Governors of the Federal Reserve System, October 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26460 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 14, 2003.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. S&T Bancorp, Inc., Indiana, Pennsylvania; to acquire up to 9.9 percent of the voting shares of CBT Financial Corp., Clearfield, Pennsylvania, and thereby indirectly acquire voting shares of The Clearfield Bank and Trust Company, Clearfield, Pennsylvania.

Board of Governors of the Federal Reserve System, October 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26461 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 14, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First Community Capital Corporation, Houston, Texas and First Community Capital Corporation of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Grimes County Capital Corporation, Houston. Texas, and thereby indirectly acquire Community State Bank, Houston, Texas.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. American Pacific Bancorp, Portland, Oregon; to become a bank holding company by acquiring 100

percent of the voting shares of American Pacific Bank, Portland, Oregon.

Board of Governors of the Federal Reserve System, October 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26551 Filed 10–20–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Alternative Fuel Rule. The FTC is seeking public comments on the proposal to extend through November 30, 2006 the current PRA clearance for information collection requirements contained in the Rule. That clearance expires on November 30, 2003.

DATES: Comments must be filed by November 20, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *afv@ftc.gov,* as prescribed below, and to: Records Management Center, ATTN: Desk Officer for the FTC, OMB, Room 10102 NEOB, fax#: 202/395–6566. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned ''Alternative Fuel Rule Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Neil Blickman, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Ave., NW., Room NJ–2245, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On August 6, 2003, the FTC sought comment on the information collection requirements associated with the Alternative Fuel Rule (''Rule''), 16 CFR Part 309 (Control Number: 3084–0094). See 68 FR 46640. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

Comments from members of the public are invited, and may be filed with the Commission in either paper or electronic form. A public comment filed in paper form should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an email message sent to the following email box: *afv@ftc.gov.* Regardless of the form in which they are filed, all timely comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *http://www.ftc.gov.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives, before placing those comments on the FTC web site.

The Rule, which implements the Energy Policy Act of 1992, Public Law 102–486, requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on Alternative Fueled Vehicles (AFVs). To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating produce-specific disclosures they include on these labels.

Burden statement:

It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. ''Burden'' for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Moreover, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes.

Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. (Label specifications were designed to produce labels to withstand the elements for several years.) Nonetheless, there is still some burden associated with posting labels. There also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping. The burden on vehicle manufacturers is limited because only newly-manufactured vehicles will require label posting and manufacturers produce very few new models each year. Finally, there will be some burden, also minor, associated with recordkeeping requirements.

Estimated total annual hours burden: 2,100 total burden hours, rounded.

Non-liquid alternative fuels:

Certification: Staff estimates that the Rule's fuel rating certification requirements will affect approximately 550 industry members (compressed natural gas procedures and distributors and manufacturers of electric vehicle fuel dispensing systems) and consume approximately one hour each per year for a total of 550 hours.

Recordkeeping: Staff estimates that all 1,800 industry members will be subject to the Rule's recordkeeping requirements (associated with fuel rating certification) and that compliance will require approximately one-tenth hour each per year for a total of 180 hours.

Labeling: Staff estimates that labeling requirements will affect approximately nine of every ten industry members (or roughly 1,600 members), but that the number of annually affected members is only 320 because labels may remain effective for several years (staff assumes that in any given year approximately 20% of 1,600 industry members will need to replace their labels). Staff estimates that industry members require approximately one hour each per year for labeling their fuel dispensers for a total of 320 hours.

Sub-total: 1,050 hours (550 + 180 + 320).

AFV manufacturers:

[1] FTC Rule 4.2(b), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Recordkeeping: Staff estimates that all 58 manufacturers will require 30 minutes to comply with the Rule's recordkeeping requirements for a total of 29 hours.

Producing labels: Staff estimates 2.5 hours as the average time required of manufacturers to produce labels for each of the five new AFV models introduced among them each year for a total of 12.5 hours.

Posting labels: Staff estimates 2 minutes as the average time to comply with the posting requirements for each of the approximately 30,000 new AFVs manufactured each year for a total of 1,000 hours.

Sub-total: Approximately 1,041 hours (29 + 12.5 + 1,000).

Thus, total burden for these industries combined is approximately 2,100 hours (1,050 + 1,041).

Estimated labor costs: $47,000, rounded.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to Bureau of Labor Statistics staff, the average compensation for producers and distributors in the fuel industry is $18.98 per hour and $8.56 per hour for service station employees; the average compensation for workers in the vehicle industry is $27.80 per hour.

Non-liquid alternative fuels:

Certification and labeling: Generally, all of the estimated hours except for recordkeeping will be performed by procedures and distributors of fuels. Thus, the associated labor costs would be $16,512.60 (870 hours × $18.98).

Recordkeeping: Only 1/6 of the total 180 hours will be performed by the producers and distributors of fuels; the other 5/6 is attributable to service station employees (1/6 = 30 hours × $18.98 = $569.40 + (5/6 = 150 hours × $8.56 = $1,284.00) = $1,853.40, for an estimated labor cost to the entire industry of $18,366.00.

AFV manufacturers:

The maximum labor cost to the entire industry is approximately $28,939.80 per year for recordkeeping and producing and posting labels (1,041 total hours × $27.80/hour).

Thus, estimated total labor cost for both industries for all paperwork requirements is $47,000 ($18,366.00 + $28,939.80) per year, rounded to the nearest thousand.

Estimated annual non-labor cost burden: $12,000, rounded.

Non-liquid alternative fuels:

Staff believes that there are no current start-up costs associated with the Rule, inasmuch as the Rule has been effective since 1995. Industry members, therefore, have in place the capital equipment and means necessary, especially to determine automotive fuel ratings and comply with the Rule. Industry members, however, incur the cost of procuring fuel dispenser and AFV labels to comply with the Rule. The estimated annual fuel labeling cost, based on estimates of 500 fuel dispensers (assumptions: an estimated 20% of 1,250 total retailers need to replace labels in any given year given an approximate five-year life of labels—i.e., 250 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is $190.00.

AFV manufacturers:

Here, too, staff believes that there are no current start-up costs associated with the Rule, for the same reasons as stated immediately above regarding the non-liquid alternative fuel industry. However, based on the labeling of an estimated 30,000 new and used AFVs each year at thirty-eight cents for each label (per industry sources), the annual AFV labeling cost is estimated to be $11,400.

Thus, estimated total annual non-labor cost burden associated with the Rule is $12,000 ($190.00 + $11,400.00), rounded to the nearest thousand.

William E. Kovacic,

General Counsel.

[FR Doc. 03–26494 Filed 10–20–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Delegation of Authority To Respond to Requests From Ireland's Office of the Director of Consumer Affairs

AGENCY: Federal Trade Commission.

ACTION: Delegation of authority.

SUMMARY: The Commission has delegated authority to the Associate Director for International Consumer Protection to respond to disclosure and other requests from Ireland's Office of the Director of Consumer Affairs pursuant to a memorandum of understanding with the Commission.

EFFECTIVE DATE: October 2, 2003.

FOR FURTHER INFORMATION CONTACT: Pablo Zylberglait, Legal Advisor for International Consumer Protection, International Division of Consumer Protection, (202) 326–3260, *pzylberglait@ftc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Associate Director for International Consumer Protection the authority to respond to disclosure and other requests from Ireland's Office of the Director of Consumer Affairs pursuant to a memorandum of understanding with the Commission about consumer protection information sharing and enforcement cooperation. This delegated authority does not apply to competition-related investigations. When exercising its authority under this delegation, staff may only disclose information regarding consumer protection investigations involving Ireland, and will require assurances of confidentiality from Ireland's Office of the Director of Consumer Affairs. Disclosures shall be made only to the extent consistent with current limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–26493 Filed 10–20–03; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[Wildlife Order 185; 7–U–TX–1055]

Matagorda Island Lighthouse Reservation, Matagorda Island, TX Transfer of Property

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. The General Services Administration transferred 15.29 acres of land and improvements, identified as Matagorda Island Lighthouse Reservation, Matagorda Island, TX to the U.S. Fish and Wildlife Service, Department of the Interior by transfer letter dated May 30, 2000.

2. The above property was conveyed for wildlife conservation in accordance with the provisions of section 1 of Public Law 80–537 (16 U.S.C. 667b), as amended by Public Law 92–432.

Dated: September 22, 2003.

Brian K. Polly,

Assistant Commissioner, Office of Property Disposal.

[FR Doc. 03–26474 Filed 10–20–03; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04010]

Programs To Improve the Health, Education, and Well-Being of Young People; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Programs to Improve the Health, Education, and Well-Being of Young People was published in the **Federal Register** on October 8, 2003, Volume 68, Number 195, pages 58103–58110. The notice is amended as follows:

On page 58109, Column 3, Section I. ''Other Requirements'', section 3, Financial Status Report, delete ''Within 90 days after the end of the entire two-year project period (by August 14, 2005) and replace with ''Within 90 days after the end of the entire two-year project period (by August 14, 2006).

In addition, a summary of program announcement 04010, Programs to Improve the Health, Education, and Well-Being of Young People, was published in the **Federal Register** on October 7, 2003. This notice is amended as follows: On page 57998, column 1, delete Program Contact information. On page 57998, column 1, estimated project period, delete three years and replace with two years. Also on page 57998, column 1, project award date, delete March 15 and replace with May 15.

Dated: October 15, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–26473 Filed 10–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Procedures to Use Child Care and Development Fund (CCDF) for Construction or Major Renovation.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 and first updated in February 2001. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction & Renovation	10	1	20	200

Estimated Total Annual Burden Hours: 200.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: October 15, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–26513 Filed 10–20–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0472]

Statement of Work for the Evaluation of First Cycle Review Performance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Statement of Work for the Evaluation of First Cycle Review Performance.'' FDA requests comment on the document, which describes a study to evaluate issues associated with FDA's conduct of first cycle reviews of new drug applications (NDAs), biological license applications (BLAs), and efficacy supplements. FDA intends to award a contract to an independent expert consultant that would include, among other tasks, the performance of such a study. The document, as currently written, will be included in the Request for Proposal (RFP) as a sample statement of work. However, prior to actually assigning the task under the contract, FDA intends to finalize the statement of work after considering all received comments.

DATES: Submit written comments on the document by November 20, 2003.

ADDRESSES: Submit written requests for single copies of the document to First Cycle Review, Office of Planning (HFP–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pdufa/default.htm.* Submit written comments on the document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Staples, Office of Planning (HFP–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5274.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Statement of Work for the Evaluation of First Cycle Review Performance.'' FDA requests comment on the document, which describes a study to evaluate issues associated with FDA's performance of first cycle reviews of NDAs, BLAs, and efficacy supplements.

On June 12, 2002, the President signed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes the Prescription Drug User Fee Amendments of 2002 (PDUFA III). In conjunction with the passage of PDUFA III, FDA agreed to certain performance goals and procedures that were described in an enclosure to a June 4, 2002, letter from the Secretary of Health and Human Services, Tommy Thompson, to Congress entitled ''PDUFA Reauthorization Performance Goals and Procedures'' (PDUFA Goals and Procedures). One of the goals relates to FDA's performance of first cycle reviews of original NDAs, BLAs, and efficacy supplements (PDUFA Goals and Procedures, section 10). Specifically, FDA agreed to retain an independent expert consultant to undertake a study to evaluate issues associated with the agency's conduct of first cycle reviews. The study is intended to assess the following: (1) Current first cycle review performance and any changes that occur after FDA publishes guidance on Good Review Management Principles (GRMPs), (2) the first cycle review history of all NDAs for new molecular entities and all BLAs during PDUFA III, and (3) the effectiveness of FDA's staff training regarding GRMPs. FDA agreed to develop a statement of work for the study and to provide the public with an opportunity to review and comment on the statement of work before the study is implemented.

In accordance with one of the PDUFA goals, the document being made available for public comment today is the statement of work developed by FDA. FDA intends to award a contract that would include, among other tasks, the performance of the study. The document, as currently written, will be included in the RFP as a sample statement of work. However, the statement of work is not yet final. FDA will consider all comments received in finalizing the statement of work prior to assigning the task under the contract.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments on the document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The document made available today and the received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26446 Filed 10–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program, Phase Four—New—SAMHSA's Center for Mental Health Services (CMHS) is conducting Phase IV of this national evaluation project among grantees newly funded in FY 2002 and 2003. The national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program will collect data on child mental health outcomes, family life, and service system development and performance.

Data will be collected on 23 service systems, and approximately 5,281 children and families. Data collection for this evaluation will be conducted over a five-year period. The core of service system data will be collected every 18 months throughout the 5-year evaluation period, with a sustainability survey conducted in selected years. Service delivery and system variables of interest include the following: Maturity of system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation.

Child and family outcomes of interest will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: Child symptomatology and functioning, family functioning, material resources, and caregiver strain. In addition, an evidence-based treatment study will examine the relative impact of evidence-based treatments focused on substance use prevention within 2 systems of care. Time-limited studies addressing the cultural competence of services and the role of primary care providers in systems of care will be conducted at selected points during the evaluation period. Internet-based technology will be used for collecting data via Web-based surveys and for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average

number of responses per respondent per year, the average length time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response (hrs.)	Total average annual hours
Caregiver	5281	1.016	2.066	11,086
Youth	3169	0.998	1.053	3,333
Provider/Administrator	483	0.453	2.594	568
Total				14,987

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 14, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–26471 Filed 10–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–16298]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 1625–0080

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns surveys of customers' satisfaction. Before submitting the ICR to OMB, the Coast Guard is inviting comments.

DATES: Comments must reach the Coast Guard on or before December 22, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–16298] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's paragraph on the ''Privacy Act'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–16298], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. This information collection report may change the estimated ''information'' burden based on the comments received.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should

include their names and addresses, identify this document [USCG 2003–16298], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

Title: Surveys of Customers' Satisfaction.

OMB Control Number: 1625–0080.

Summary: Executive Order 12862 authorizes the Coast Guard to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Need: Putting people first means ensuring that the Federal Government provides the highest-quality of service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public seek to meet established standards of customer service and (1) identify the customers who are, or should be, served by the agency and (2) survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Respondents: Recreational boaters, commercial mariners, industry groups, and State and local governments.

Frequency: On occasion.

Burden: The estimated burden is 5,000 hours a year.

Dated: October 10, 2003.

Clifford I. Pearson,

Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 03–26511 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4707–N–09]

Public Housing Assessment System (PHAS): Physical Condition Scoring Process and Financial Condition Scoring Process

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

ACTION: Notice.

SUMMARY: This notice advises public housing agencies (PHAs) and the public that HUD will extend the use of four elements that were part of the interim scoring processes for the Public Housing Assessment System (PHAS) Physical Condition Indicator. HUD adopted interim scoring processes for two of the four PHAS indicators ''Physical Condition and Financial Condition—by notice published in the **Federal Register** on March 15, 2002, and described in notices published in the **Federal Register** on November 26, 2001. Except for the four elements that are being extended, the Physical Condition and Financial Condition Indicators for PHAs with fiscal years ending on and after September 30, 2003, will be scored in accordance with the Physical Condition Scoring Process notice published on June 28, 2000, and the Financial Condition Scoring Process notice published on December 21, 2000.

After consideration, the Department has determined not to implement the proposed rule for PHAS. The current PHAS is now fully operational and is providing complete and official assessment scores. Beginning with the fiscal year ending September 30, 2001, PHAs were scored under the four PHAS indicators, rather than issued an advisory score. Since that time, the Department has increased its PHAS-related quality assurance activities.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing Real Estate Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington DC 20024; telephone the Technical Assistance Center at 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2002 (67 FR 11844), HUD published a notice adopting PHAS interim scoring processes for PHAs with fiscal years ending September 30, 2001, December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. In that notice, HUD announced interim changes in the scoring methodology for two of the four PHAS assessment indicators: the Physical Condition Indicator and Financial Condition Indicator. Detailed information about the changes to the scoring processes was provided in notices published in the **Federal Register** on November 26, 2001. The Introduction notice is published at 66 FR 59080. The Physical Condition Scoring Process Interim Scoring notice is published at 66 FR 59084. The Financial Condition Scoring Process Interim Assessments notice is published at 66 FR 59126. A notice published in the **Federal Register** on August 30, 2002 (67 FR 55860), extended the interim scoring methodologies to apply to PHAs with fiscal years ending December 31, 2002, March 31, 2003 and June 30, 2003.

II. Physical Condition Scoring Process and Financial Condition Scoring Process

At the time that the interim scoring processes were adopted on March 15, 2002, the Department advised that if an extension of the interim period were necessary, the Department would notify PHAs and the public by notice published in the **Federal Register**. The Department will extend the following four elements of the November 26, 2001 notice for PHAs with fiscal years ending on and after September 30, 2003:

1. The Item Weights and Criticality Levels, Appendix 1 to the Physical Condition Scoring Notice of November 26, 2001, 66 FR 59090–59102;
2. The Dictionary of Deficiency Definitions, Appendix 2 to the Physical Condition Scoring Notice of November 26, 2001, 66 FR 59102–59124;
3. The sampling weights for buildings explained in the section entitled ''16. Examples of Sampling Weights for Buildings'' of the November 26, 2001 notice, 66 FR 59088; and
4. As stated in the November 26, 2001 notice, 66 FR 59081, the overall PHAS Indicator #1 score will continue to determine the frequency of inspections of a PHA's portfolio. For PHAs whose PHAS Indicator #1 score is 24 or higher based on the 30 point score, physical inspections will be conducted every two years (subject to any changes made in further revisions to the rule or scoring notices). For PHAs whose PHAS Indicator #1 score is less than 24 based on the 30 point score, physical inspections will be conducted annually.

With respect to all other elements of the November 26, 2001 interim scoring methodologies, the Department has determined that an extension of the interim period is not necessary, and by this notice is notifying PHAs and the public that PHAs having fiscal years ending on and after September 30, 2003, the PHAS scores will be issued for effect based on the scoring notices published in the **Federal Register** prior to the publication of the November 26, 2001, notices. The prior Physical Condition Scoring Process notice was published on June 28, 2000 (65 FR 39988). The prior Financial Condition Scoring

Process notice was published on December 21, 2000 (65 FR 80686).

III. Applicable Regulations and Notices

Itemized in the chart below are the applicable regulations and scoring process notices that, together with the four elements extended by this notice, govern the assessment and scoring of PHAs under the PHAS for PHAs with fiscal years ending September 30, 2003 and after.

Item	Publication date	Federal Register Page No.
Public Housing Assessment System (PHAS) Amendments; Final Rule	January 11, 2000	65 FR 1738.
Public Housing Assessment System (PHAS): Technical Correction; Final Rule.	June 6, 2000	65 FR 36042.
Public Housing Assessment System Physical Condition Scoring Process; Notice.	June 28, 2000	65 FR 39988.
Public Housing Assessment System; Financial Condition Scoring Process; Notice.	December 21, 2000	65 FR 80686.
Public Housing Assessment System Management Operations Scoring Process for PHAs With Fiscal Years Ending On or After March 31, 2000; Notice.	June 28, 2000	65 FR 40028.
Public Housing Assessment System Resident Service and Satisfaction Scoring Process; Notice.	June 28, 2000	65 FR 40034.

Dated: October 10, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–26475 Filed 10–20–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List as Endangered or Threatened Wolverine in the Contiguous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the wolverine (Gulo gulo luscus) in the contiguous United States as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition and additional information available in our files did not present substantial scientific or commercial information indicating that listing the wolverine in the contiguous United States may be warranted. We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to this species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on October 15, 2003. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Montana Ecological Services Field Office, U.S. Fish and Wildlife Service, 100 North Park Avenue, Suite 320, Helena, Montana 59601. The petition, finding, and supporting information are available for public inspection, by appointment, during normal business hours, at the above address. Submit new information, materials, comments, or questions concerning this species to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Lori Nordstrom, at the address given in the **ADDRESSES** section (telephone (406) 449–5225; facsimile (406) 449–5339; electronic mail *FW6_wolverine@fws.gov).*

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of receiving the petition and publish a notice of the finding promptly in the **Federal Register**. Our standard for substantial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly begin a review of the status of the species, if one has not already been initiated, under our internal candidate assessment process.

On July 14, 2000, we received a petition dated July 11, 2000, submitted by the Biodiversity Legal Foundation, Predator Conservation Alliance, Defenders of Wildlife, Northwest Ecosystem Alliance, Friends of the Clearwater, and Superior Wilderness Action Network. The petition requests that we list the wolverine within the contiguous United States as a threatened or endangered species and designate critical habitat for the species.

On April 19, 1995, we published a notice of our finding that a previous petition submitted by the Predator Project (now named the Predator Conservation Alliance) and Biodiversity Legal Foundation to list the wolverine in the contiguous United States did not provide substantial information indicating that listing the wolverine in the contiguous United States may be warranted (60 FR 19567).

Since 1995, little new information on wolverine biology, distribution, habitat requirements, or possible threats has been published. The species is still considered one of the least understood medium carnivores. The only new research completed for the contiguous United States is that on wolverine ecology in Idaho (Copeland 1996; Magoun and Copeland 1998; Edelman and Copeland 1999), and a genetic study (Cegelski 2002). Banci (1994) is a compilation of existing wolverine information plus suggestions for research or management considerations. Additional research on wolverine ecology, current and historic

distribution, population demographics, and habitat requirements is underway that should provide better information with which to understand the wolverine (Inman *et al.* 2002; J. Squires, Rocky Mountain Research Station, pers. comm. 2003; U.S. Forest Service, in litt. 2002).

The wolverine has a holarctic distribution. The currently accepted taxonomy classifies wolverines worldwide as a single species, *Gulo gulo.* Old and New World wolverines are divided into separate subspecies. Wolverines in the contiguous United States are a part of the New World subspecies, *G. g. luscus* (Kurten and Rausch 1959; Pasitschniak-Arts and Lariviere 1995). We follow this currently accepted taxonomic treatment, although in the past we recognized other taxonomic classifications for wolverine (September 18, 1985; 50 FR 37958).

The wolverine is the largest terrestrial member of the family *Mustelidae,* with adult males weighing 12 to 18 kilograms (kg) (26 to 40 pounds (lb)) and adult females weighing 8 to 12 kg (17 to 26 lb) (Banci 1994). It resembles a small bear with a bushy tail. It has a round, broad head; short, rounded ears; and small eyes. There are five toes on each foot, with curved and semiretractile claws used for digging and climbing (Banci 1994).

Wolverines are opportunistic feeders, consuming a variety of foods depending on availability. They primarily scavenge carrion, but also prey on small animals and birds and eat fruits, berries, and insects (Hornocker and Hash 1981; Wilson 1982; Hash 1987; Banci 1994). Wolverines have an excellent sense of smell, enabling them to find food beneath deep snow (Hornocker and Hash 1981).

Breeding generally occurs from late spring to early fall. Females undergo delayed implantation until the following winter to spring, when active gestation lasts from 30 to 40 days (Rausch and Pearson 1972). Litters are born between February and April, containing one to five kits, with two to three kits being the most common number (Hash 1987). Reproductive dens in Idaho were located in snow-covered boulder talus in subalpine cirque basins (Copeland 1996; Magoun and Copeland 1998).

Wolverines have large spatial requirements; the availability and distribution of food is likely the primary factor in determining wolverine movements and home range (Hornocker and Hash 1981; Banci 1994). Wolverines can travel long distances over rough terrain and deep snow, with adult males generally covering greater distances than females (Hornocker and Hash 1981; Banci 1994). Home ranges of wolverines are generally extremely large, but vary greatly depending on availability of food, gender, age, and differences in habitat. Home ranges of adult wolverines range from less than 100 square kilometers (km2) to over 900 km2 (38.5 square miles (mi2) to 348 mi2) (Banci 1994). Copeland (1996) found that annual home ranges of resident adult females in central Idaho averaged 384 km2 (148 mi2), while the annual home ranges of resident adult males averaged 1,522 km2 (588 mi2).

In North America, wolverines occur within a wide variety of habitats, primarily boreal forests, tundra, and western mountains throughout Alaska and Canada, with the southern portion of the wolverine range extending into the contiguous United States (Wilson 1982; Hash 1987; Banci 1994; Pasitschniak-Arts and Lariviere 1995). The specific range of the wolverine in the contiguous United States is not well understood, preventing us from accurately delineating the historic or current range using the information available to us at this time. The petitioners state that wolverine were trapped to near or complete extinction throughout its former range in the western states in the early 20th century. However, information from state and Federal wildife experts suggest the species has reoccupied its western range in recent years .

The current range in the contiguous United States is believed to include Idaho, Montana, Oregon, Washington, Wyoming, and possibly California (Banci 1994). Wolverines have recently been documented in Idaho (Copeland 1996), Montana (Inman *et al.* 2002; B. Giddings, Montana Department of Fish, Wildlife and Parks, pers. comm. 2003; J. Squires, pers. comm. 2003), Washington (Washington Department of Fish and Wildlife, in litt. 1998) and Wyoming (Inman *et al.* 2002). However, we do not know the extent of the historic range. Wolverines reportedly occurred in a number of other States historically, including Colorado, Maine, Michigan, Minnesota, New Hampshire, New York, North Dakota, Utah, and Wisconsin, suggesting a much wider range historically (Wilson 1982; Hash 1987; Pasitschniak-Arts and Lariviere 1995). The petitioners generally stated that wolverines have been extirpated from States in the Great Lakes, High Plains, and Northeast. But, as we found in 1995, the petition provides no information to confirm the reliability of these historic reports. Furthermore, without a better understanding of the habitat requirements of the wolverine, we cannot ascertain whether habitats in many States were capable of supporting wolverines historically, which would help us determine their historic range.

The wolverine naturally occurs in low densities (Hornocker and Hash 1981; Hash 1987; Banci 1994). Petitioners state that (1) wolverine range and numbers have decreased dramatically since Pre-Columbian times due to human activities and developments, and (2) wolverines currently number fewer than 1,000 animals across the lower 48 states.

However, Hornaker and Hash (1981) asserted stable populations on their study area in Montana, with high dispersal patterns maintaining the stability, rebounding from near extinction in Montana from 1920–1940 (Newby and Wright 1955).

Recent surveys in the west indicate that wolverines appear to be distributed in the montane regions of Idaho, Montana, Washington and Wyoming (Copeland 1996; Washington Department of Wildlife 1998; Inman *et al.* 2002; Giddings pers. comm. 2003; Squires pers. comm. 2003). So, despite scant population and abundance information, there are reports and surveys to suggest that wolverine may not be likely to become threatened in the foreseeable future in the lower 48 states. Wolverines are difficult and expensive to study and are rarely observed, so a lack of sightings does not necessarily mean that wolverines are not present (Banci 1994). There have been few, if any, surveys of wolverines in the contiguous United States that were designed to estimate population size at even a local scale. As a result, it is scientifically unsound to make an estimate of wolverine population size using currently available information, particularly for the entire contiguous United States.

Despite the limitations of available wolverine data, the petitioners provided their own estimation of the size of the wolverine population for the contiguous United States. They arrived at their estimate apparently by creating their own measure of local wolverine densities and extrapolating across what they determined to be the current range of wolverine. Given the lack of data on wolverine population densities even at a local level, using such preliminary information to estimate population size is inappropriate.

Based on what we know about wolverines (*i.e.*, they are found in low densities and have large home ranges), we expect wolverine population sizes to appear low when compared to other species with different population dynamics.

At this time, this lack of information prevents us from determining whether wolverines in the contiguous United States constitute a ''distinct population segment'' (DPS), which would make them eligible to be listed under the Act. Our Distinct Vertebrate Population Policy published in 1996 (61 FR 4722) specifies that we are to use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS—(1) The population segment's discreteness from the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the taxon to which it belongs. A taxon is the taxonomic group of animals to which the population belongs—in this case the subspecies *G. g. luscus.*

Under section 4(a) of the Act, we may list a species, subspecies, or DPS of vertebrate on the basis of any of five factors—(A) Destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other man-made or natural factors affecting its continued existence. The petition asserts that wolverines are subject to threats primarily under Factors A, B, and D. The Service used information provided by the petitioners and available in its files to address these factors as follows.

Under Factor A, the petition asserts wolverines have been impacted by the loss of roadless areas due to logging practices. However, Banci (1994) stated that ''the impacts of logging and associated activities on wolverines and wolverine habitat can only be surmised.'' Wolverines are generally associated with remote areas and require large expanses of land as refugia from human activities, especially during denning. Hornocker and Hash (1981) mentioned that wilderness or remote areas, with limited human activity, appear to be necessary for viable wolverine populations; however, they found no difference in wolverine densities between the wilderness and non-wilderness areas of the study, nor were there differences in their movement, habitat use, or behavior. The non-wilderness portion of the study area was mainly used by humans for logging and recreation (Hornocker and Hash 1981). Copeland (1996) also found wolverines in areas that were currently being logged.

The petitioners cite human disturbance of denning habitat, particularly snowmobile activity, as a threat to wolverines. New research indicates wolverines are sensitive to disturbance when they are denning. In two instances female wolverines moved their kits and abandoned their dens upon encountering researchers; the kits survived the move (Copeland 1996; Magoun and Copeland 1998). Copeland (1996) concluded that protection of natal denning habitat is important to the persistence of wolverine in Idaho. The petitioners provide general information that snowmobile activity is increasing and could expand into regions where wolverines occur, but there is a lack of information to determine the degree to which snowmobile activity may be increasing within wolverine denning habitat or what impact it may be having on wolverine populations.

The petitioners cite landscape fragmentation due to transportation corridors and associated developments as a threat to wolverines. The Service agrees that development is increasing throughout the contiguous United States; however, the level to which landscape fragmentation may be affecting wolverines and their ability to meet their habitat requirements is unknown because little is known about wolverine range and movement. Genetic differentiation among wolverine populations in Idaho, Montana, and Wyoming has been documented, suggesting some level of isolation among these populations possibly as a result of human-caused habitat fragmentation (Cegelski 2002). However, given the lack of understanding of wolverine habitat regarding factors affecting dispersal, all knowledge of possible causes of the genetic differences among these populations is speculative at this time.

Based on the foregoing discussion, we find that the petition does not present substantial information to indicate that habitat impacts threaten the continued existence of the wolverine in the contiguous United States.

Under Factor B, the petitioners cite trapping as a threat to wolverines in the contiguous United States. Over much of the wolverine distribution, trapping has been a primary factor in wolverine mortality (Banci 1994). Trapping is believed to have played a role in an apparent historic decline of wolverine in North America in the late 19th and early 20th centuries (Hash 1987). Today, within the contiguous United States, the only State where wolverine trapping is legal is Montana. Although this trapping season may be detrimental to local wolverine populations, it is not known whether trapping in Montana alone threatens the continued existence of the wolverine population in the contiguous United States. The petitioners also suggest incidental trapping and poisoning of wolverines as a threat, but provide no supporting information for this assertion.

Under Factor C, the petitioners mention predation by other large predators (*e.g.*, wolves) as a source of wolverine mortality. However, this is a natural event and is not considered a threat to the persistence of wolverines in the contiguous United States. There is no information on diseases that may impact wolverine populations.

Under Factor D, the petition cites a lack of Federal protection as a threat to wolverines because a major part of the wolverine's range falls upon lands managed by the U.S. Forest Service (USFS). The USFS has designated wolverines as a ''sensitive species'' in Regions 1, 2, 4, and 6, and ''proposed sensitive'' in Region 5. The Bureau of Land Management has determined wolverine to be ''sensetive.'' Conservation efforts are planned for various Federal lands and the upcoming USFS report will help improve the scant information currently available.

It is not possible at this time to determine whether management actions threaten the continued existence of wolverines in the contiguous United States. The USFS is leading a cooperative effort with other Federal agencies, States, and Tribes to conduct research and studies for the development of a scientifically-based strategy for conserving wolverines (USFS, in litt. 2002). Initial work is focused on summarizing historic observation data in an effort to delineate historic and current range and habitat relationships. Ongoing research and surveys will examine wolverine ecology, population demographics, distribution, and habitat use with an emphasis on broad-scale movements and population connectivity.

Finally, under Factor E, the petitioners generally cite the wolverine's low reproductive rate, sensitivity during denning, and need for large areas of unfragmented range and habitat as factors making the wolverine vulnerable to extinction. These natural life history characteristics distinguish the wolverine from other medium-sized carnivores. However, reports and surveys of wolverine from Idaho, Montana, Wyoming, and Washington suggest some stability. It is important to collect more information on wolverine occurrence, distribution, and habitat requirements in addition to developing management measures to conserve the species.

In summary, we find that there is insufficient information in the petition or in our files on wolverine habitat requirements or range to determine

whether destruction or modification of wolverine habitat and range is occurring to the extent that it affects the status of the wolverine. We also found insufficient evidence to indicate that the wolverine trapping season in Montana or incidental trapping or poisoning poses a threat to the wolverine population in the contiguous United States. The paucity of data on wolverine life history and habitat requirements leads us to conclude that there is insufficient evidence to determine if land and wildlife managers are failing to conserve wolverines. There also is insufficient data to determine whether human disturbance is negatively impacting wolverine populations on a scale that impacts the status of the species.

We anticipate that ongoing studies of wolverines and, in particular, a scientific assessment of wolverines in the contiguous United States being led by the USFS that should be available in 2004, will improve our understanding of this species in the contiguous United States.

We have reviewed the petition, information submitted by the petitioners, other pertinent literature, and information available in Service files. We find the petition does not present substantial information to indicate that petitioned action may be warranted. This finding is based on insufficient information to—(1) Determine whether the wolverine in the contiguous United States constitutes a DPS under the Act, (2) understand possible threats to the wolverine, or (3) determine whether or not the species is declining in the contiguous United States.

References Cited: A complete list of all references cited herein is available upon request from the Montana Field Office (*see* **ADDRESSES**).

Author: The primary authors of this document are Katrina Dixon and Lori Nordstrom, Montana Field Office, Helena, Montana.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 15, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–26453 Filed 10–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005 to 2014

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/ environmental impact report (EIS/EIR) and notice of scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) propose to prepare a joint EIS/EIR for a 10-year water transfer program. The program would consist of the transfer of up to 130,000 acre-feet of substitute water (maximum of 80,000 acre-feet of developed water and a maximum of 50,000 acre-feet from land fallowing) from the Exchange Contractors to other Central Valley Project (CVP) contractors, to Reclamation for delivery to the San Joaquin Valley wetland habitat areas (wildlife refuges), and/or to Reclamation and/or the Department of Water Resources (DWR) for use by the CALFED Environmental Water Account (EWA) as replacement water for CVP contractors. Reclamation would approve and/or execute short-term and/or long-term temporary water transfers or agreements

DATES: A public scoping meeting will be held on November 18, 2003 at 6 p.m. in Los Banos, California.

Written comments on the scope of the EIS/EIR should be mailed to Mr. Bob Eckart at the address below by November 25, 2003.

ADDRESSES: The public scoping meeting will be held at the San Joaquin Exchange Contractors Board Room, 541 H Street, Los Banos, CA 93635.

Written comments on the scope of the EIS/EIR should be sent to Bureau of Reclamation, Mid-Pacific Region, Division of Environmental Affairs, Attention: Mr. Bob Eckart, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Eckart at the above address or by calling (916) 978–5051.

SUPPLEMENTARY INFORMATION: The objective of the proposed 10-year transfer program is the transfer of CVP water from the Exchange Contractors to:

- Other CVP contractors to meet demands of agriculture, municipal, and industrial uses,
- the Department of the Interior's Water Acquisition Program for delivery to the San Joaquin Valley Federal, state, and private wildlife refuges, and/or
- Reclamation or DWR for use by the CALFED EWA Program to benefit CVP operations by providing replacement water to CVP contractors.

The Exchange Contractor's proposed water transfer program would assist Reclamation in optimizing the use of limited existing water resources for agriculture, fish and wildlife resources, and municipal and industrial purposes. CVP water would be transferred to other CVP contractors to support the production of agricultural crops and livestock. Also, the Santa Clara Valley Water District is in need of short-term water supplies to support agriculture, municipal, and industrial uses in Santa Clara County. Reclamation's Water Acquisition Program needs additional water to provide the refuges with the increment between Level 2 and Level 4 water quantities for fish and wildlife habitat development. Reclamation or DWR may also need to acquire additional CVP water south of the Delta to replace water used for fish protection actions pursuant to CALFED's EWA Program (for the benefit of the CVP).

The water transfers would occur largely within the San Joaquin Valley of central California. The Exchange Contractors service area covers parts of Fresno, Madera, Merced, and Stanislaus counties. The agricultural water users that would benefit from the potential transfers are located in the counties of Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Tulare, Kings, and Kern. The wetland habitat areas that may receive the water are located in Merced, Fresno, Kings, Tulare, and Kern counties. Water purchased for use by Reclamation or DWR for the EWA may be provided to CVP contractors in the West San Joaquin and San Felipe divisions to replace water bypassed at Tracy Pumping Plant pursuant to EWA fish protection actions.

Some of the resources potentially affected by transfers under the proposed 10-year transfer program include: surface water, groundwater, biological resources (vegetation, wildlife, and fisheries), land use (including agriculture), socioeconomics, Indian Trust Assets, and environmental justice.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from public disclosure, which we will honor to the extent allowable by law. There may also be

circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 19, 2003 .

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–26468 Filed 10–20–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Statement of process-marking of plastic explosives for the purpose of detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 22, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Patterson, Public Safety Branch, 800 K Street NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The information contained in the statement of process is required to ensure compliance with the provisions of Pub. L. 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8 respondents will complete the required information in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 16 estimated annual total burden hours associated with this collection.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: October 16, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–26495 Filed 10–20–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 23, 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.darin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), 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.

Type of Review: New collection.

Agency: Employment Standards Administration.

Title: The Secretary of Labor, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards.

OMB Number: 1215–0NEW.

Affected Public: Business or other for-profit and non-for-profit institutions.

Frequency: Annually.

Type of Response: Reporting.
Number of Respondents: 80.
Annual Responses: 80.
Average Response Time: Secretary of Labor Award—250 hours; EVE Award—120 hours; and EPIC Award—96 hours.
Annual Burden Hours: 37,280.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $32.00.
Description: The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community. The information collected by the nomination process is necessary for determining which establishments should receive an award.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–26479 Filed 10–20–03; 8:45 am]
BILLING CODE 4510–CM–M

DEPARTMENT OF LABOR

Employment Standards 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 Standards Administration is soliciting comments concerning the proposed collection: Davis-Bacon and Related Act/Contract Work Hours and Safety Standards Act Reporting Requirements—Regulations, 29 CFR Part 5. A copy of the proposed information collection request 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 22, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

This regulation prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for construction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). The Davis-Bacon Act provides that every contract subject to the Act must contain a provision (wage determination) stating the minimum wages and fringe benefits to be paid the various classes of laborers and mechanics employed on the contract. Any class of laborer or mechanic not listed in the wage determination which is to be employed under the contract shall be classified in conformance with the wage determination, and a report of the action shall be submitted through DOL for review and approval. Further, where a benefit plan is not of the conventional type described in the Act and/or common in the construction industry which is established under a customary fund or program, the regulation provides for contractors to request approval of unfunded fringe benefit plans. This information collection is currently approved for use through April 30, 2004.

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

The Department of Labor seeks approval for the extension of this information collection in order to ensure that federal contractors are in compliance with the Davis-Bacon and Related Acts (DBRA) as well as the Contract Work Hours and Safety Standards Act (CWHSSA).

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements-Regulations, 29 CFR Part 5.
OMB Number: 1215–0140.
Affected Public: Business of other for-profit; Federal Government; State, local or tribal government.

Requirement	Number of respondents	Number of responses	Estimated time per response	Burden hours
Conformance Report	1,500	1,500	15 minutes	375
Unfunded Fringe Benefit Plans	6	6	6 hours	6
Total	1,506	1,506		381

Frequency: On Occasion.

Estimated Total Burden Hours: 381.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 15, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–26480 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,710]

Conso International Corp., Union, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Conso International Corporation, Union, South Carolina (TA–W–52,710).

There is a duplicate petition in process for the same worker group (TA–W–52,722). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of September, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26481 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,546 and TA–W–50,546A]

Emerson Tool Company, Paris, TN; Emerson Tool Company Headquarters, St. Louis, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 15, 2003, applicable to workers of Emerson Tool Company, Paris, Tennessee. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6212).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of power tools.

The company reports that worker separations occurred at the Headquarters, St. Louis, Missouri location of the subject firm. Workers at the St. Louis, Missouri location provide administrative function services for the subject firm's production plant located in Paris, Tennessee.

Based on these findings, the Department is amending the certification to include workers of Emerson Tool Company, Headquarters, St. Louis, Missouri.

The intent of the Department's certification is to include all workers of Emerson Tool Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,546 is hereby issued as follows:

All workers of Emerson Tool Company, Paris, Tennessee (TA–W–50.546) and Emerson Tool Company, Headquarters, St Louis, Missouri (TA–W–50,546A), who became totally or partially separated from employment on or after January 10, 2002, through January 15, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26488 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,341]

Firestone Tube Company Russellville, AR; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on August 7, 2003, for all workers of Firestone Tube Company located in Russellville, Arkansas. The notice will soon be published in the **Federal Register**.

The Department, at the request of the State agency, reviewed the certification for workers of Firestone Tube Company, Russellville, Arkansas. Workers of the subject firm produce inner tubes.

The certification review shows that all workers of Firestone Tube Company, Russellville, Arkansas, are covered by an existing certification, TA–W–50,544, issued on July 30, 2003. All workers of the subject firm who became totally or partially separated from employment on or after January 7, 2002, through July 30, 2005, are eligible to apply for adjustment assistance.

Since the workers of Firestone Tube Company, Russellville, Arkansas, are covered by an existing certification, the continuation of this certification would serve no purpose and the certification has been terminated.

Signed in Washington, DC, this 18th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26485 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,644]

Fisher Controls, a Division of Emerson Process Management, McKinney, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003, in response to a petition filed by workers at Fisher Controls, a Division of Emerson Process Management, McKinney, Texas.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of September, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26483 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,466]

Fishing Vessel (F/V) Fawcett Point, State of Alaska Commercial Fisheries Entry, Commission Permit #S04K595562L Old Harbor, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Fishing Vessel (F/V) Fawcett Point, State of Alaska Commercial Fisheries Entry Commission Permit #S04K595562L, Old Harbor, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–51,466; Fisheries Entry Commission Permit State of Alaska Commercial Fishers Entry Commission Permit #S04K595562L, Old Harbor, Alaska (September 2, 2003)

Signed at Washington, DC this 3rd day of October 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–26486 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,629]

General Binding Corporation, Boonville, MS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 20, 2003, in response to a petition filed by a company official on behalf of workers at General Binding Corporation, Boonville, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of September, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26484 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,576 et al.]

Great Northern Paper Company, Inc., East Millinocket, ME; Including Employees of Great Northern Paper Company, Inc., Operating at Various Locations; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 3, 2003, applicable to workers of Great Northern Paper Company, Inc., East Millinocket, Maine. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the East Millinocket, Maine facility of Great Northern Paper Company, Inc. operating at various locations in the following states: Illinois, Wisconsin, Connecticut, Ohio, New Jersey and Alabama. These employees provide sales and marketing support function services for the production of directory paper at the East Millinocket, Maine location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the East Millinocket, Maine location of Great Northern Paper Company, Inc. operating at various locations in the following states: Illinois, Wisconsin, Connecticut, Ohio, New Jersey and Alabama.

The intent of the Department's certification is to include all workers of Great Northern Paper Company, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,576 is hereby issued as follows:

All workers of Great Northern Paper Company, Inc., East Millinocket, Maine (TA–W–50,576), including employees of Great Northern Paper Company, Inc., East Millinocket, Maine operating at various locations in the following states: Illinois (TA–W–50,576A), Wisconsin (TA–W–50,576B), Connecticut (TA–W–50,576C), Ohio (TA–W–50,576D), New Jersey (TA–W–50,576E), and Alabama (TA–W–50,576F), who became totally or partially separated from employment on or after January 14, 2002, through February 3, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of September 2003

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26487 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,469 and TA–W–41,469B]

Telect, Liberty Lake, WA, Including Employees of Telect Located in Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2002, applicable to workers of Telect, Liberty Lake, Washington. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57453).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Liberty Lake, Washington facility of Telect located in Florida. These employees provided sales function services and customer services for the production of fiber optic patchcords and pigtails at the Liberty Lake, Washington location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Liberty Lake, Washington facility of Telect located in Florida.

The intent of the Department's certification is to include all workers of Telect who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,469 is hereby issued as follows:

All workers of Telect, Liberty Lake, Washington (TA–W–41,469), including

employees of Telect, Liberty Lake, Washington, located in Florida (TA–W–41,469B), who became totally or partially separated from employment on or after April 16, 2001, through August 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26489 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,690]

Zawick Manufacturing Co., Hellertown, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2003 in response to a worker petition which was filed by UNITE! on behalf of workers at Zawick Manufacturing Company, Hellertown, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of September, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26482 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06385]

Ameriphone, Inc., A Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Ameriphone, Inc.* v. *U.S. Secretary of Labor* (Court No. 03–00243).

The Department's initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–6385) for the workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California (hereafter ''Ameriphone''), was issued on September 11, 2002 and published in the **Federal Register** on September 27, 2002 (67 FR 61160). The denial was based on the finding that the workers at the subject facility did not produce an article as required by Section 250 of the Trade Act of 1974.

On March 10, 2003, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–6385 and published in the **Federal Register** on March 18, 2003 (68 FR 12938).

In the request for reconsideration, the petitioner alleged that the workers were engaged in the final phase of production (inspecting, testing and modifying products) as well as prototype design and production. In the reconsideration investigation, the Department found that the articulated functions constituted a negligible portion of the work performed at the subject facility and that the workers were, in fact, service providers.

On voluntary remand, the Department contacted the company and requested detailed information regarding the workers' functions at the subject facility. The newly obtained information revealed that workers at the subject facility were engaged in production. The new information also revealed that a significant portion of the production performed at the subject facility was shifted to Mexico impacting workers at the subject plant.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that a shift of production to Mexico of products like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers of Ameriphone, Inc., Garden Grove, California. In accordance with the provisions of the Act, I make the following certification:

All workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California, who became totally or partially separated from employment on or after June 24, 2001 through two years of this certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of October 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–26490 Filed 10–20–03; 8:45 am]

BILLING CODE 4510–30–P

MARINE MAMMAL COMMISSION

Advisory Committee on Anthropogenic Sound and Marine Mammals; Notice of Intent, Request for Comments and Nominations

AGENCY: Marine Mammal Commission.

ACTION: Notice of intent to charter the Advisory Committee on Anthropogenic Sound and Marine Mammals and request for comments and nominations.

SUMMARY: The Omnibus Appropriations Act of 2003 (Pub. L. 108–7) directs the Marine Mammal Commission to organize a series of national and international meetings concerning the impacts of sound on marine mammals and how these impacts may be addressed. To help meet this directive, the Commission is considering the establishment of the Advisory Committee on Anthropogenic Sound and Marine Mammals under the Federal Advisory Committee Act (FACA; Pub. L. 92–463). Committee members would participate in a policy dialogue to review available information, identify research needs, and recommend management actions and strategies.

The Commission is seeking comments regarding:

(1) The need for and desirability of establishing an advisory committee pursuant to FACA;

(2) The issues any such Committee should consider; and

(3) The affected individuals, interest groups, or stakeholders who should be represented.

The Commission is also seeking recommendations for possible Committee members who meet the qualifications specified below.

DATES: Comments on this notice of intent and recommendations for Committee members must be submitted in writing before November 5, 2003. The Commission intends to appoint Committee members in December 2003 so that the first Committee meeting can be convened in late January or early February 2004.

ADDRESSES: Written comments and recommendations should be submitted to Erin Vos, Project Manager for Sound-Related Meetings and Actions, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Vos at the above address or e-mail, tel.: (301) 504–0087, or fax: (301) 504–0099; or visit the Commission Web site at *http://www.mmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is considering the

establishment of the Advisory Committee on Anthropogenic Sound and Marine Mammals, which would undertake a policy dialogue to review available information, identify research needs, and recommend management actions and strategies. The Commission has contracted with a team of third-party neutral facilitators who will assess the feasibility of establishing the Committee and will examine options for the format of the dialogue. The Commission will make its final determination on the need for establishing a federal advisory committee after the facilitators submit their feasibility report in November 2003. If the Commission determines that it is necessary and desirable to proceed under the Federal Advisory Committee Act, the Commission, in consultation with the contracted facilitators, will select and appoint Committee members to represent the following stakeholder and interest groups:

- Entities whose activities introduce anthropogenic sounds into the marine environment, including the academic research community, industry (shipping, oil and gas exploration, etc.), and government agencies;
- Non-governmental organizations, including environmental groups;
- Scientists with pertinent expertise; and
- Government agencies that manage or otherwise affect marine mammals.

The Commission will seek a balanced representation among interested parties. Committee members will be expected to have a high level of interest or expertise concerning the impacts of sound on marine mammals and other components of the marine environment. Additional criteria considered when selecting Committee members may include:

- Ability to attend Committee meetings;
- Decision-making authority;
- Ability to represent a constituency and communicate effectively with constituents whose interests they represent;
- Experience in collaborative policy dialogue or negotiation; and
- Likelihood of being affected by the outcome.

Dated: October 15, 2003.

David Cottingham,

Executive Director.

[FR Doc. 03–26472 Filed 10–20–03; 8:45 am]

BILLING CODE 6820–31–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974, as Amended; System of Records Notices

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to add a new Privacy Act system of records and modify an existing system of records.

SUMMARY: The National Archives and Records Administration (NARA) proposes to add a system of records notice to its existing inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. In this notice, NARA publishes NARA 37—Order Online! (NARA Online Ordering System), for comment. NARA also proposes to expand coverage in one of its existing systems, NARA 25—Order Fulfillment and Accounting System Records (OFAS), to include transmittal data received from NARA Online! (NARA Online Ordering System). Last, an obsolete reference is deleted from Appendix B, which lists NARA's system managers.

EFFECTIVE DATES: The establishment of the new system NARA 37 and changes to the existing system NARA 25 will become effective without further notice on November 20, 2003, unless comments received on or before that date cause a contrary decision. If changes are made based on NARA's review of comments received, a new final notice will be published.

ADDRESSES: Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001. You may fax your comments to 301–837–0293. You may also comment via the Internet to *comments@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Ramona Branch Oliver, Privacy Act Officer, 301–837–2024 (voice) or 301–837–0293 (fax).

SUPPLEMENTARY INFORMATION: NARA last published a comprehensive set of Privacy Act system notices in the **Federal Register** on April 2, 2002 (67 FR 15592). NARA published two additional systems; NARA 35 and NARA 36, in the **Federal Register** on October 17, 2002 (67 FR 64142).

NARA is proposing to add NARA 37—Order Online! (NARA Online Ordering System) to its existing inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. NARA 37 covers persons who order NARA products (*e.g.* reproductions of NARA archival materials) online. NARA is also proposing to expand coverage in one of its existing systems, NARA 25—Order Fulfillment and Accounting System Records (OFAS), to include transmittal data received from NARA Online!

The notice for each of the two systems of records states the following:

- Name and the location of the record system;
- Authority for and manner of its operation;
- Categories of individuals that it covers;
- Types of records that it contains;
- Sources of information in these records;
- Proposed ''routine uses'' of each system of records; and
- Business address of the NARA official who will inform interested persons of the procedures they must follow to gain access to and correct records pertaining to themselves.

Last, a reference to an obsolete NARA unit is deleted from Appendix B, which lists NARA's systems managers. Appendix A, which identifies routine uses of NARA's systems of records, remains unchanged.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles in transferring information to another agency or individual as a ''routine use'', including assurance that the information is relevant for the purposes for which it is transferred.

Dated: October 16, 2003.

John W. Carlin,

Archivist of the United States.

Accordingly, we are publishing the proposed new system of records notice NARA 37 and the revised system of records notice NARA 25 as follows:

NARA 37

SYSTEM NAME:

Order Online! (NARA Online Ordering System).

SYSTEM LOCATION:

Order Online! is located in the data center at the National Archives and Records Administration in College Park, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include researchers who order reproductions of NARA archival materials at *http://www.archives.gov.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Order Online records may include: user login data (*i.e.*, user ID and password; User Profile Data (*e.g.*, name, address, phone number); credit card payment data (*e.g.*, card type, card number, expiration date); reproduction order form data (*e.g.*, detailed information describing the requested archival record); and transaction data (*e.g.*, system-generated order identification information such as order number, order date, order type).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2116(c), 2307 and 3504.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system are used only for order entry, order validation, order processing, payment processing, and order fulfillment. The public may use the Order Online! system to complete and submit a reproduction order to NARA. Each night, Order Online! submissions are sent to NARA's Order Fulfillment and Accounting System (OFAS–NARA 25) via an automated XML (extensible markup language) interface that operates within NARA's secure internal network.

Order Online! maintains profile data (*e.g.*, name, address, phone number) for researchers who initiate orders of reproductions. The profile data is used to automatically complete the payment and/or shipping address sections of the order form so that customers do not have to manually re-enter the information. Neither NARA nor its agents use Order Online! customer profile data for other purposes.

The routine use statements A, E, and F, described in Appendix A apply to this system of records. Appendix A was published in the **Federal Register** on April 2, 2002 (67 FR 15592).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records.

RETRIEVABILITY:

Information in the Order Online! records may be retrieved by the NARA customer using his or her user ID and password. Also, summary order data (order number, master number [OFAS order number]), status (*e.g.*, received, processing, shipped, cancelled) and submission date may be retrieved by the customer or the NARA customer service agent using the order number.

SAFEGUARDS:

Access to the data center that houses the Order Online! system is restricted to approved systems administrators and, with the exception of a limited number of operations staff, is limited to normal business hours. Electronic records are accessible only on a ''need to know basis'' using controlled logins and passwords from terminals located in attended offices. Credit card information is compartmentalized so that it is available only to those NARA employees responsible for posting and billing credit card transactions. The National Archives at College Park has 24-hour security guards, controlled entrances, and electronic surveillance.

RETENTION AND DISPOSAL:

Order Online! records are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for Order Online! records is: Assistant Archivist for Records Services—Washington, DC (NW). The address for this location is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records are to notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records are to submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in Order Online! records is obtained from NARA customers, employees or agents who are involved in the order process, and General Services Administration (GSA) employees who process refunds.

NARA 25

SYSTEM NAME:

Order Fulfillment and Accounting System Records (OFAS).

SYSTEM LOCATION:

OFAS records are maintained in organizational units in the following Washington, DC, area locations:

- Office of Records Services—Washington, DC;
- Office of Presidential Libraries;
- Office of the Federal Register;
- Office of Regional Records Services; and
- National Archives Trust Fund Division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: researchers who order reproductions at Washington, DC, area and regional records services facilities or online at *www.archives.gov;* and customers who order NARA inventory items, such as microform and printed publications, mementos, and other specialty products from catalogues and other marketing publications.

CATEGORIES OF RECORDS IN THE SYSTEM:

OFAS records may include: Catalogue order forms; other ordering forms; correspondence; copies of checks, money orders, credit card citations, and other remittances; invoices; and order and accounting information in the electronic system. These records may contain some or all of the following information about an individual: Name, address, telephone number, record(s) or item(s) ordered, and credit card or purchase order information. OFAS records also include user profile data, reproduction order form data, transaction data, and credit card payment data transmitted from Order Online! (NARA Online Ordering System—NARA 37) via an automated XML (extensible markup language) interface that operates within NARA's secure internal network.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2116(c) and 2307.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains OFAS records on individuals to: receive, maintain control of, and process orders for reproductions of archival records and other fee items; bill customers for orders; maintain payment records for orders; process refunds; and provide individuals information on other NARA products.

Customer order information may be initially disclosed to a NARA agent, a

bank that collects and deposits payments in a lockbox specifically used for crediting order payments to the National Archives Trust Fund. NARA may disclose certain order information to contractors acting as NARA agents that make reproductions of archival records. NARA also may disclose information in OFAS records for the processing of customer refunds to the General Services Administration (GSA), which provides NARA's financial and accounting system under a cross-servicing agreement.

The routine use statements A, E, and F, described in Appendix A apply to this system of records. Appendix A was published in the **Federal Register** on April 2, 2002 (67 FR 15592).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in OFAS records may be retrieved by the name of the individual and/or the OFAS transaction number. The invoice number or zip code may also retrieve information in electronic records.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. Credit card information is compartmentalized so that it is available only to those NARA employees responsible for posting and billing credit card transactions. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

OFAS records are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for OFAS records is: Assistant Archivist for Administrative Services (NA). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records are to notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records are to submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in OFAS records is obtained from customers, NARA employees or agents who are involved in the order process, and GSA employees who process refunds.

Appendix B

To inquire about your records or to gain access to your records, you should submit your request in writing to:

NARA Privacy Act Officer
Office of General Counsel (NGC)
National Archives at College Park
8601 Adelphi Road, Room
College Park, MD 20740–6001

If the system manager is the Assistant Archivist for Record Services—Washington, DC (NW), the records are located at the following address:

Office of Record Services—Washington, DC (NW)
National Archives at College Park
8601 Adelphi Road, Room 3400
College Park, MD 20740–6001

If the system manager is the director of a Presidential library, the records are located at the appropriate Presidential library, staff or project:

GEORGE BUSH LIBRARY
1000 George Bush Drive West
College Station, TX 77845

JIMMY CARTER LIBRARY
441 Freedom Parkway
Atlanta, GA 30307–1498

WILLIAM J. CLINTON PRESIDENTIAL MATERIALS PROJECT
1000 LaHarpe Boulevard
Little Rock, AR 72201

DWIGHT D. EISENHOWER LIBRARY
200 SE 4th Street
Abilene, KS 67410–2900

GERALD R. FORD LIBRARY
1000 Beal Avenue
Ann Arbor, MI 48109–2114

HERBERT HOOVER LIBRARY
210 Parkside Drive
P.O. Box 488
West Branch, IA 52358–0488

LYNDON B. JOHNSON LIBRARY
2313 Red River Street
Austin, TX 78705–5702

JOHN F. KENNEDY LIBRARY
Columbia Point
Boston, MA 02125–3398

NIXON PRESIDENTIAL MATERIALS STAFF
National Archives at College Park
8601 Adelphi Road
College Park, MD 20740–6001

RONALD REAGAN LIBRARY
40 Presidential Drive
Simi Valley, CA 93065–0600

FRANKLIN D. ROOSEVELT LIBRARY
4079 Albany Post Road
Hyde Park, NY 12538–1999

HARRY S. TRUMAN LIBRARY
500 West U.S. Highway 24
Independence, MO 64050–1798

OFFICE OF PRESIDENTIAL LIBRARIES
National Archives at College Park
8601 Adelphi Road
College Park, MD 20740–6001

If the system manager is the director of a regional records services facility, the records are located at the appropriate regional records services facility:

NARA's Pacific Alaska Region (Anchorage)
654 West Third Avenue
Anchorage, Alaska 99501–2145

NARA's Southeast Region (Atlanta)
1557 St. Joseph Avenue
East Point, Georgia 30344–2593

NARA's Northeast Region (Boston)
Frederick C. Murphy Federal Center
380 Trapelo Road
Waltham, Massachusetts 02452–6399

NARA's Great Lakes Region (Chicago)
7358 South Pulaski Road
Chicago, Illinois 60629–5898

NARA's Great Lakes Region (Dayton)
3150 Springboro Road
Dayton, Ohio 45439–1883

NARA's Rocky Mountain Region (Denver)
Bldg. 48, Denver Federal Center
West 6th Avenue and Kipling Street
Denver, Colorado 80225–0307

NARA's Southwest Region (Fort Worth)
501 West Felix Street, Building 1
Fort Worth, Texas 76115–3405

NARA's Central Plains Region (Kansas City)
2312 East Bannister Road
Kansas City, Missouri 64131–3

NARA's Pacific Region (Laguna Niguel, CA)
24000 Avila Road, 1st Floor, East Entrance
Laguna Niguel, California 92677–3497

NARA's Central Plains Region (Lee's Summit, MO)
200 Space Center Drive
Lee's Summit, Missouri 64064–1182

NARA's Northeast Region (New York City)
201 Varick Street
New York, New York 10014–4811

NARA's Mid Atlantic Region (Center City Philadelphia)
900 Market Street
Philadelphia, Pennsylvania 19107–4292

NARA's Mid Atlantic Region (Northeast Philadelphia)
14700 Townsend Road
Philadelphia, Pennsylvania 19154–1096

NARA's Northeast Region (Pittsfield, MA)
10 Conte Drive
Pittsfield, Massachusetts 01201–8230

NARA's Pacific Region (San Francisco)
1000 Commodore Drive
San Bruno, California 94066–2350

NARA's Pacific Alaska Region (Seattle)
6125 Sand Point Way NE
Seattle, Washington 98115–7999

National Personnel Records Center
Civilian Personnel Records
111 Winnebago Street
St. Louis, Missouri 63118–4126

National Personnel Records Center
Military Personnel Records
9700 Page Avenue
St. Louis, MO 63132–5100

Washington National Records Center (WNRC)
4205 Suitland Road,
Suitland, MD 20746–8001

If the system manager is the Director of the National Historical Publications and Records Commission (NHPRC), the records are located at the following address:

National Historical Publications and Records Commission (NHPRC)
National Archives and Records Administration
700 Pennsylvania Avenue, NW, Room 111
Washington, DC 20408–0001

If the system manager is the Director of the Policy and Communications Staff, the records are located at the following address:

Policy and Communications Staff (NPOL)
National Archives and Records Administration
8601 Adelphi Road, Room 4100
College Park, MD 20740–6001

If the system manager is the Assistant Archivist for Human Resources and Information Services, the records are located at the following address:

Office of Human Resources and Information Services (NH)
National Archives and Records Administration
8601 Adelphi Road, Room 4400
College Park, MD 20740

If the system manager is the Assistant Archivist for Administrative Services, the records are located at the following address:

Office of Administrative Services (NA)
National Archives and Records Administration
8601 Adelphi Road, Room 4200
College Park, MD 20740

If the system manager is the Director of the Federal Register, the records are located at the following address:

Office of the Federal Register (NF)
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408–0001

If the system manager is the Inspector General, the records are located at the following address:

Office of the Inspector General (OIG)
National Archives and Records Administration
8601 Adelphi Road, Room 1300
College Park, MD 20740

If the system manager is the General Counsel, the records are located at the following address:

Office of the General Counsel (NGC)
National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740

[FR Doc. 03–26613 Filed 10–17–03; 9:17 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed 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 discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 4, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for United States History and Culture II, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

2. *Date:* November 7, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for History of Science, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

3. *Date:* November 13, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2003 deadline.

4. *Date:* November 14, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for United States History and Culture III, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

5. *Date:* November 14, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 714.
Program: This meeting will review applications for Humanities Projects in Libraries and Archives/Special Projects, submitted to the Division of Public Programs at the September 16, 2003 deadline.

6. *Date:* November 21, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2003 deadline.

7. *Date:* November 21, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Visual Arts, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

8. *Date:* November 24, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2003 deadline.

Heather Gottry,
Acting Advisory Committee Management Officer.

[FR Doc. 03–26450 Filed 10–20–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc., to withdraw its January 29, 2003, application for proposed amendment to Facility Operating License No. NPF–6 for Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas.

The proposed amendment would have revised the Technical Specifications pertaining to the spent fuel pool loading restrictions by redefining the regions, inserting Metamic poison panels in a portion of the spent fuel pool, and increasing the minimum boron concentration.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 18, 2003 (68 FR 12950). However, by letter dated August 26, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 29, 2003, and the licensee's letter dated August 26, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of October, 2003.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26478 Filed 10–20–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of October 20, 27, November 3, 10, 17, 24, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 20, 2003

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.

Week of November 17, 2003—Tentative

Thursday, November 20, 2003

12:45 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of November 24, 2003—Tentative

There are no meetings scheduled for the Week of November 24, 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 Bamberoni (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on October 14, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); petitions for review of LBP–02–23 and LBP–03–11'' be held on October 15, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

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 16, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–26630 Filed 10–17–03; 10:32 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.132, ''Site Investigations for Foundations of Nuclear Power Plants,'' describes field investigations for determining the geological, engineering, and hydrogeological characteristics of a prospective plant site. It also provides guidance to licensees and applicants on developing geologic information on stratigraphy, lithology, and structure of the site.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Y. Li, (301) 415–4141; e-mail *yxl1@nrc.gov*.

Regulatory guides are available for inspection or downloading at the NRC's

Web site at <*http://www.nrc.gov*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to <*distribution@nrc.gov*>. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; <*http://www.ntis.gov/*>. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

Dated at Rockville, MD this 2nd day of October 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–26477 Filed 10–20–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

October 30, 2003 Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Thursday, October 30, 2003, 1:30 p.m. (open portion) 1:45 p.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the Public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m (approx.).

MATTERS TO BE CONSIDERED:

1. President's report.
2. Approval of July 17, 2003 minutes (open portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:45 p.m.)

1. Finance project—Global.
2. Finance project—Global.
3. Finance project in South Africa.
4. Insurance project in Brazil.
5. Insurance project in Azerbaijan, Georgia & Turkey.
6. Approval of July 17, 2003 minutes (closed portion).
7. Approval of October 15, 2003 minutes (closed portion).
8. Pending major projects.
9. Reports.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: October 17, 2003.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 03–26616 Filed 10–17–03; 9:53 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26208; File No. 812–12994]

COUNTRY Mutual Funds Trust, et al.

October 15, 2003.

AGENCY: The Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order of Exemption under Section 6(c) of the Investment Company Act of 1940, as amended (''1940 Act'') from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder. *Applicants:* COUNTRY Mutual Funds Trust (''Trust'') and COUNTRY Trust Bank (''CTB'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of the Trust and shares of any other existing or future investment company that is designed to fund insurance products and for which CTB, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies being hereinafter referred to, collectively, as ''Insurance Trusts''), or permit shares of any current or future series of any Insurance Trust (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); and (3) any investment manager to an Insurance Trust (''Manager'') and affiliates thereof.

FILING DATE: The application was filed on July 30, 2003, and amended and restated on October 14, 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 on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 14, 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0690. Applicants, c/o Paul M. Harmon, General Counsel and Secretary, COUNTRY Trust Bank, 1705 N. Towanda Avenue, P.O. Box 2020, Bloomington, Illinois 61702–2020.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust organized on August 13, 2000, and is registered as an open-end management investment company under the 1940 Act. The Trust consists of the following nine series: COUNTRY Growth Fund (''Growth Fund''), COUNTRY Balanced Fund (''Balanced Fund''), COUNTRY Tax Exempt Bond Fund (''Tax Exempt Bond Fund''), COUNTRY Short-Term Bond Fund (''Short-Term Bond Fund'') and COUNTRY Bond Fund (''Bond Fund''), COUNTRY VP Growth Fund (''VP Growth Fund''), COUNTRY VP Balanced Fund (''VP Balanced Fund''), COUNTRY VP Short-Term Bond Fund (''VP Short-Term Bond Fund'') and COUNTRY VP Bond Fund (''VP Bond Fund''). Additional series and classes of the Fund and additional Insurance Funds may be established in the future. Only the VP Growth Fund, VP Balanced Fund, VP Short-Term Bond Fund and VP Bond Fund constitute Insurance Funds for purposes of this Application.

2. CTB serves as the Trust's investment manager. CTB is registered as an investment adviser with the SEC under the Investment Advisers Act of 1940, as amended. Quasar Distributors, LLC (''Quasar''), a broker-dealer registered with the Commission and a member of the National Association of Securities Dealers, Inc., serves as the

distributor for the following series of the Trust: Growth Fund, Balanced Fund, Tax Exempt Bond Fund, Short-Term Bond Fund, and Bond Fund. COUNTRY Capital Management Company, a broker-dealer registered with the Commission and a member of the National Association of Securities Dealers, Inc., serves as the distributor for the following series of the Trust: VP Growth Fund, VP Balanced Fund, VP Short-Term Bond Fund, and VP Bond Fund.

3. The Insurance Trusts intend to offer shares of the Insurance Funds to (a) registered and unregistered separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, ''Separate Accounts''); (b) Qualified Plans; and (c) the Manager and its affiliates.

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies will establish their own Separate Accounts and design their own contracts. Each Participating Insurance Company will have the legal obligation to satisfy all applicable requirements under both state and federal law. It is anticipated that Participating Insurance Companies will rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Trusts intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager and its affiliates, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts (''Treasury Regulations''). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or its affiliates is computed in the same manner as for shares held by the Separate Accounts, and the Manager and its affiliates do not intend to sell to the public shares of the Insurance Fund that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager and its affiliates who may hold shares only in connection with the creation or management of the Insurance Fund. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to Manager and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Fund to be offered and sold to, and held by: (a) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (b) Qualified Plans; and (c) any Manager to an Insurance Trust and affiliates thereof.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of 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 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans or to the Manager and its affiliates.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the

shares of one or more underlying funds which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans or by the Manager and its affiliates. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans or to the Manager and its affiliates.

5. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager and its affiliates, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Trusts may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans or the Manager and its affiliates on the other hand, the Participating Insurance Companies, Qualified Plans and the Manager and its affiliates must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager and its affiliates or the inclusion of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans arose, the Qualified Plans, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager and its affiliates or Qualified Plans to invest directly in the Insurance Trusts should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan or the investment company's investment manager or its affiliates without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986 (''Code'') imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the investment manager of the investment company and certain companies related to the investment manager to hold shares of the investment company subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(ii)).

8. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan or the investment company's investment manager or its affiliates without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, or to the investment company's investment manager and its affiliates (collectively, ''eligible shareholders'') could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of Section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the Trust. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of

monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not directly participate in the administration or management of the Insurance Trusts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Trusts. Those individuals who participate in the management or administration of the Insurance Trusts will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use the Insurance Trusts. Therefore, applying the monitoring requirements of Section 9(a) to the thousands of individuals employed by Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Funds to Qualified Plans or the Manager and its affiliates. The insulation of the Insurance Trusts from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans and the Manager and its affiliates are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. The Insurance Trusts' sale of shares of Insurance Funds to Qualified Plans or the Manager and its affiliates will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and its affiliates are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans or the Manager and its affiliates.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated

Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Trust's election, to withdraw its separate account's investment in that Insurance Trust, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans and the Manager and its affiliates. The transfer agent(s) for the Insurance Funds will inform each shareholder, including each Separate Account, each Qualified Plan, and the Manager and its affiliates, of its share ownership, in an Insurance Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans in any Insurance Fund will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans arises, the Qualified Plans may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans (*i.e.,* long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An underlying fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Funds. In addition, permitting mixed and shared funding will facilitate the establishment of additional Insurance Funds serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Trust with a greater variety of investment objectives and policies.

19. Applicants note that Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts and the Manager and its affiliates all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Trusts to sell the respective shares of their Insurance Funds directly to Qualified Plans or the Manager and its affiliates does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan or the Manager and its affiliates. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans and the Manager and its affiliates have rights only with respect to their respective shares of the Insurance Funds. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants have considered whether there are any conflicts between the contract owners of separate accounts and the participants under Qualified Plans, the Manager or its affiliates with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders agree with a particular proposal. This does not mean that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, the trustees of Qualified Plans can quickly make the decision to redeem and then implement the redemption of their Plans' shares from the Insurance Funds and reinvest in another funding vehicle without the same regulatory impediments, or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of contract owners and Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem shares out of the Insurance Funds. The Manager and its affiliates can similarly redeem their shares out of the Insurance Funds and make alternative investments at any time.

22. Applicants considered whether there is a potential for future conflicts of interests between Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interest of participants under Qualified Plans and contract owners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

23. Applicants assert that permitting an Insurance Trust to sell shares of its Insurance Funds to the Manager and its affiliates in compliance with Treas. Reg. 1.817–5 will enhance Insurance Trust management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that, unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Insurance Trusts may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the Act. It is anticipated that many other Insurance Trusts may lack an insurance company promoter. Accordingly, Applicants assert that such Insurance Trusts will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

24. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Fund, on the one hand, and its Manager(s) and its affiliates, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager and its affiliates will permit the orderly and efficient creation and operation of an Insurance Fund, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Fund operations.

25. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Funds as a common investment medium for variable contracts and Qualified Plans would help alleviate these concerns, because Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of CTB, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Funds available for mixed and shared funding and permitting the purchase of Insurance Fund shares by Qualified Plans may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Funds. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Trusts, or by making the addition of new Insurance Funds more feasible.

26. Applicants submit that, regardless of the type of shareholder in any of the Insurance Funds, the investment advisers and subadvisers are or will be contractually obligated to manage each Insurance Fund solely and exclusively in accordance with that Insurance Fund's investment objectives and restrictions as well as with any guidelines established by the Board of Trustees of the Trust, or by the board of directors or trustees of any future Insurance Fund that is not a series of the Trust, as the case may be. With respect to each Insurance Fund, the investment advisers and subadvisers work with a pool of money and do not take into account the identity of the shareholders. Thus, any current or future Insurance Fund will be managed in the same manner as any other mutual fund.

Applicants' Conditions

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Trust shall consist of persons who are not ''interested persons'' of the Insurance Trust, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the respective Insurance Trust for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, and of the Plan participants, Qualified Plans, and the

Manager or its affiliates investing in that Insurance Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Insurance Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Trust, any Participating Insurance Company, and the Manager and its affiliates (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Trust under their agreements governing participation in the Insurance Trust, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Trust, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Trust, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Trust or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Trust's election, to withdraw its Separate Account's investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Trust, to withdraw its investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Trust or its Manager(s) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. However, as to variable contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered separate accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by any such registered Separate Account, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Trust calculates voting privileges in a manner consistent with all other Participating Insurance

Companies. The obligation to vote an Insurance Trust's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Trust shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Trust. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Trust will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Trust shall disclose in its prospectus that: (a) Shares of the Insurance Trust are offered to insurance company separate accounts which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Trust and the interests of Qualified Plans investing in the Insurance Trust might at some time be in conflict; and (c) the Board will monitor the Insurance Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Trust and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Insurance Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Trust), and in particular each Insurance Trust will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Manager and its affiliates will vote its shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Trust; provided, however, that the Manager and its affiliates shall vote their shares in such other manner as may be required by the Commission or its staff.

12. The Participants shall at least annually submit to the Board of an Insurance Trust such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the Application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of a Participant to provide these reports, materials and data to the Board of the Insurance Trust when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in each Insurance Trust.

13. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Fund, the Insurance Trust shall require such Plan to execute a participation agreement with such Insurance Trust which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Fund.

14. Any shares of an Insurance Fund purchased by the Manager or its affiliates will be automatically redeemed if and when the Manager's investment management agreement terminates, and to the extent required by the applicable Treasury Regulations. Neither the Manager nor its affiliates will sell such shares of the Insurance Fund to the public.

15. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission: (a) A list of its officers, directors and employees who participate directly in the management or administration of the Insurance Trusts or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Insurance Trusts and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a Separate Account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26447 Filed 10–20–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region III Regulatory Fairness Board

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, October 30, 2003 at 8:30 a.m. at Annapolis City Council Chamber, City Hall, 2nd Floor, Duke of Gloucester Street, Annapolis, MD 21401, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Oliver J. Phillips in writing or by fax, in order to be put on the agenda. Oliver J. Phillips, Chief of Business Development, SBA Baltimore District Office, 10 S. Howard

Street, Suite 6220, Baltimore, MD 21201, phone (410) 962–6195 x337, fax (410) 962–1805, e-mail: *oliver.phillips@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: October 10, 2003.

Peter Sorum,

National Ombudsman (Acting).

[FR Doc. 03–26462 Filed 10–20–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4517]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Eurasia Professional Exchanges and Training Program for Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (the Bureau) invites applicants to submit proposals that encourage the growth of democratic institutions in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Ukraine, and Uzbekistan. For this competition, single country projects only are eligible for support. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support international projects in the United States and overseas involving current or potential leaders.

Important Note: This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting proposals. Once the RFGP deadline has passed, Office of Citizen Exchanges staff may not discuss this competition with applicants until after the Bureau program and project review process has been completed.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the ''Eurasia Professional Exchanges and Training Program'' (PET) and number ECA/PE/C/EUR–04–33.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, Room 220, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Attention: Eurasia Professional Exchanges and Training Program, telephone number (202) 401–6884, fax number (202) 619–4350 to request a Solicitation Package. The Solicitation Package, which includes the Request for Grant Proposals (RFGP), the Proposal Submission Instructions (PSI) and the diversity statement, contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

For specific inquiries, please contact Bureau program officers by phone or e-mail: Kendra Davis (202) 619–5328 (*kldavis@pd.state.gov*); Henry Scott (202) 619–5327 (*hscott@pd.state.gov*); Michael George (202) 619–5330 (*mdgeorge@pd.state.gov*); Brent Beemer (202) 401–6887 (*bbeemer@pd.state.gov*). (Note: Please refer to the specific program theme under ''Program Information'' to identify which program officer you should contact.)

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

General Program Guidelines: This competition is based on the premise that people-to-people exchanges encourage and strengthen democratic initiatives and nurture the social, political and economic development of societies. Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: They should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area and country;
- Experienced staff with language facility and a commitment by the staff to monitor projects locally to ensure implementation;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A post-grant plan that includes activities that will take place after the Bureau-funded grant has concluded. (See Review Criterion #5 below for more information on post-grant activities.)
- A detailed assessment of project needs and feasibility. Proposals that include costs or time for a needs assessment may be deemed less competitive.

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments should be included in the section under ''Institutional Capacity'' (See Review Criterion # 2 below). Proposals should contain letters of support tailored to the proposed project from foreign-country partner organizations. Applicants should clearly outline in the narrative the foreign partner's role and responsibilities in project management and implementation.

Proposal narratives must clearly demonstrate an organization's commitment to consult closely with the designated program officer at Bureau of Educational and Cultural Affairs, and with Public Affairs Sections at U.S. Embassies. Proposal narratives must confirm that all materials developed for the project will acknowledge Bureau funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning; extended and intensive workshops; and seminars taking place in the United States or overseas. Examples of program activities include:

1. A U.S.-based program that includes: Orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development. Proposals that include U.S.-based training will receive the highest priority.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans; strengthen professional and volunteer skills; share their experience with committed people within each country; and become active in a practical and valuable way.

3. Site visits by U.S. facilitators/experts to monitor projects in the region

and to provide additional training and consultations as needed.

Activities ineligible for support: The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Selection of Participants

All grant proposals should clearly describe the type of persons that will participate in the program as well as the participant selection process. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When American participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Programs must comply with J–1 visa regulations. Please refer to ''Adherence with J–1 Visa Regulations'' below.

Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. At a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Evaluation

In general, evaluation should occur throughout the project. The evaluation should incorporate an assessment of the program from a variety of perspectives. Specifically, project assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any other related training needs, and (c) assessing if the project has effectively identified resources, advocates, and financial support for the sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal evaluation must be conducted at the end of each component, should measure the impact of the activities and should obtain participants' feedback on the program content and administration. A detailed evaluation will be conducted at the conclusion of the project and a report will be submitted to the Department of State Bureau of Educational and Cultural Affairs. When possible, the evaluation should be conducted by an independent evaluator.

Program Information

Overview

The Bureau welcomes proposals that respond directly to the themes and countries listed below. Given budgetary considerations, projects in countries and for themes other than those listed will not be eligible for consideration and will be ruled technically ineligible. The themes listed below are important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be awarded in all categories.

For this competition, single country projects only are eligible for support. Multi-country projects are not eligible for this competition. In order to prevent duplication of effort, proposals should reflect an understanding of the work of international and USG agencies so that projects complement other exchange or assistance programs.

Two-way exchanges will be given the highest priority. Applicants should carefully review the following information in formulating proposals in Eurasian countries.

To be eligible for a grant award under this competition, the proposed professional training and exchange projects must address one of the following specific themes for single country projects:

Armenia—Women's Leadership.
Azerbaijan—Women's Leadership.
Belarus—Training and Internships for Media Professionals.
Georgia—Public Health Awareness.
Kazakhstan—Training for Media Professionals in Covering Social Issues.
Kyrgyz Republic—Tolerance.
Moldova—Anti-Corruption.
Russia—Intellectual Property Rights.
Russia—Role of a Free Press in a Modern Market Economy.

Tajikistan—Diplomatic Training.
Ukraine—Partnerships for Internet-based Media Outlets.
Ukraine—Tolerance.
Uzbekistan—Press Spokespersons Training.

Women's Leadership

Single Country Project for Armenia

Over the past decade, women's organizations in Armenia have emerged as a force for social change and democratic development. However, the low number of visible women leaders does not reflect the makeup of Armenian society. The Bureau is interested in proposals that will enhance women's participation in politics and promote their successful engagement in civil society by providing leadership training to aspiring women leaders, particularly those outside of Yerevan. Participants should include women who are politically active or who have leadership potential, including national and municipal officials. Programs would focus on developing management skills for organizational efficiency, building networks and coalitions, increasing visibility and effectiveness in the political sphere, and influencing decisions at all levels of government. Training should combine elements such as leadership fundamentals, the introduction or improvement of skills associated with campaign management, accountability to constituencies, voter outreach, networking, message development, working with the media, and fundraising. Proposals should emphasize government ethics issues and the importance of increasing public confidence in public institutions. Continuous communication, mentoring, and consultation between overseas participants and trainers/mentors should be described in detail and conducted throughout the life of the grant. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in Armenia. Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

Single Country Project for Azerbaijan

Over the past decade, the number of women in leadership positions has increased in Azerbaijan. However, the low number of visible women leaders does not reflect the makeup of Azeri society. The Bureau is interested in proposals that will enhance women's participation in politics and promote their successful engagement in civil society by providing leadership training to aspiring women leaders, both inside and outside of Baku. Participants should include women who are politically active or who have leadership potential, including national and municipal officials. Programs would focus on developing management skills for organizational efficiency, building networks and coalitions particularly at the local and regional levels, increasing visibility and effectiveness in the political sphere, and influencing decisions at all levels of government. Training should combine elements such as leadership fundamentals, the introduction or improvement of skills associated with campaign management, accountability to constituencies, voter outreach, networking, message development, working with the media, and fundraising. Proposals should emphasize government ethics issues and the importance of increasing public confidence in public institutions. Continuous communication, mentoring, and consultation between overseas participants and trainers/mentors should be described in detail and conducted throughout the life of the grant. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in Azerbaijan.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Brent Beemer, (202) 401–6887, *bbeemer@pd.state.gov.*

Training and Internships for Media Professionals From Belarus

Single Country Projects for Belarus Only

ECA seeks proposals for programs that will provide training in Western-style journalism techniques and in effective business management for employees of independent media outlets in Belarus. Proposals must indicate a practical and sophisticated knowledge of the political and media environment in Belarus. Proposed activities should not duplicate the work done under recent or existing media training programs, but should complement those efforts. Proposals should include a U.S.-based training program for up to ten media professionals. (The Public Affairs Section in Minsk will select participants for this program; applicants should not propose participant recruitment or selection.) Participants may be reporters, editors, and/or media managers, and may be from broadcast and/or print media outlets. The U.S.-based component should begin with group orientation activities and meetings, followed by a hands-on internship component at an appropriate host U.S. media outlet. Applicants should identify those outlets willing to host Belarusian participants. Internships should be developed for small groups consisting of not more than three persons. In addition to the U.S.-based component, other training activities may take place in Poland or Ukraine. If proposed, activities in Poland or Ukraine should provide Belarusian participants the opportunity to meet with representatives of independent media outlets in those countries and to learn about their professional experiences and successes. Continuous activities, including mentoring and consultations between the Belarusian participants and their U.S.-based trainers/hosts and new colleagues in Ukraine or Poland, should be conducted throughout the life of the grant and described in detail.

For this program, ECA will assign State Department interpreters for the U.S.-based internship component. Therefore, applicants should budget funds in accordance with the guidelines provided in Point 3, ''Interpreters,'' under the section of this RFGP that identifies allowable program costs, including those associated with using State Department interpreters.

Preference will be given to funding requests that do not exceed $150,000.

The contact for this theme is Henry Scott, (202) 619–5327, *hscott@pd.state.gov.*

Public Health Awareness

Single Country Projects for Georgia Only

The Bureau welcomes proposals that will focus on promoting health awareness among Georgian youth. The target audience should be organizations and individuals that work with young people. Proposals should focus on creative initiatives that will promote greater awareness of health problems common to Georgians aged 12–25, specifically, drug and alcohol abuse, HIV/AIDS and venereal disease, and cigarette smoking, and that will promote positive behaviors in a way that resonates with, rather than alienates, Georgian youth. Proposals should provide practical, hands-on training to media, NGO, education, or government professionals on how to promote good health habits, overcome social attitudes that contribute to the prevalence of unhealthy behaviors, and manage grassroots mobilization and advocacy. Formal medical education and the provision of healthcare services or medication are outside the purview of

this theme and will not be accepted activities for funding.

Preference will be given to projects that do not exceed $150,000.

The contact for this program is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

Training for Media Professionals in Covering Social Issues

Single Country Project for Kazakhstan Only

ECA seeks proposals for programs that will provide training to media professionals from Kazakhstan on reporting on sensitive social issues. Proposals should include in-country and U.S.-based training activities for journalists and/or media outlet managers. Training should not duplicate the work done under recent or existing USG-sponsored programs, but should complement those efforts. Applicants should expect to work closely with the Public Affairs Sections of the U.S. Embassy to coordinate all activities, including participant selection. U.S-based activities should include an opening group orientation, lecture-style presentations from American trainers on targeted social issues, and interactive discussions with media professionals and experts on reporting on social issues in a civil society. Applicants should also propose meetings with advocacy groups and assistance organizations that work to address social issues. In-country activities may include workshops and seminars. These may be led by the participants themselves, or by U.S. trainers, or a combination of both. In addition to group training events, activities should take place throughout the grant period. Applicants should describe in detail these activities and how they will create and sustain long-term relationships between Kazakh participants and their U.S. colleagues. Such activities may include virtual mentoring and e-mail consultations between U.S.-based trainers/experts and participants.

Preference will be given to funding requests that do not exceed $150,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

Tolerance

Single Country Projects for the Kyrgyz Republic Only

ECA welcomes proposals that will focus on promoting constructive dialogue and the prevention or reduction of stereotyping, violence and hatred, particularly among youth, in the Nookat region of Osh Oblast in Kyrgyzstan. Projects may be designed and implemented through educational institutions, NGOs or other partners. Projects should build a valued working relationship between U.S. and overseas professionals and should develop, test and result in training or outreach programs that will continue after grant support concludes. Proposals should focus on after-school programs for youth, community activities and facilitating dialogue—among parents, teachers, Muslim and other religious leaders, professionals, community activists—in order to promote better understanding of the issues that contribute to intolerance as well as strategies to address them. The program should include substantive meetings with NGOs, U.S. experts on religions, clerics, faith-based organizations, representatives of local government, and others. Programming should also introduce the evolution of U.S. laws designed to protect and promote tolerance. Travel in both directions, including a hands-on, U.S.-based program with a train the trainer component, should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Brent Beemer, (202) 401–6887, *bbeemer@pd.state.gov.*

Anti-Corruption

Single Country Projects for Moldova Only

In order to address the problem of corruption, the Moldovan government created the Center for Fighting Economic Crime and Corruption in June 2002. High-level government officials, including the President, have made statements against corruption in Moldovan society and have promised action. However, citizens have low expectations for government service and are generally inclined to view embezzlement, conflicts of interest, and bribe-taking at all levels as the norm or as something to be tolerated. ECA is looking for proposals that will build upon the preliminary efforts of the Moldovan government to fight corruption. Proposals should work with the Center for Fighting Economic Crime and Corruption and help it to establish itself as a leader in the anti-corruption efforts in Moldova. In addition, program proposals should take into account the anti-corruption activities of Transparency International in Moldova in order to prevent duplication. Programs should engage the Center's officials in relevant ethics issues, including the role of public ethics in a democratic society and ethics responsibilities for government officials. The proposed programs should include innovative ways the Center could address corruption at various levels through oversight, laws, policies, procedures and programming. Proposals should also include programming that will help the Center to increase public confidence in the government's efforts to begin combating corruption. Travel in both directions, including a hands-on, U.S.-based program with a train-the-trainer component, should be proposed. Continuous communication, mentoring and consultations between the Center and trainers/mentors, should be described in detail and conducted throughout the life of the grant. Close coordination with the U.S. Embassy in Chisinau will be essential to this project.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Brent Beemer, (202) 401–6887, *bbeemer@pd.state.gov.*

Intellectual Property Rights

Single Country Projects for Russia Only

Proposals for this project should focus on intellectual property rights (IPR) in Russia, with a special concentration on copyright protection for films/videos, music recordings, and other artistic works subject to piracy. The sale of illegal copies of CDs, videos, and movies is common practice in Russia and is widely accepted by the public as routine. Government action has been insufficient and the Russian legal system has so far been unable to address the problem effectively. Applicants should propose a two-pronged approach that targets both the cultural community (artists, performers, producers and directors, among others) as well as judicial officials. Proposals should include programming that will encourage the participants to understand the nature of intellectual property rights and work collectively in fighting the piracy of their work in Russia. Trade associations, effective lobbying techniques, and legal approaches should be among topics that are covered. Programs should emphasize hands-on, practical activities, such as case studies and examples of court proceedings or litigation regarding copyright protection. Competitive proposals will also introduce participants to some new business models for artistic work that

will help create a more legitimate market in Russia. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant. Proposals dealing with law enforcement or travel for law enforcement officials are outside the purview of this topic and will not be considered. Proposals must indicate a practical and sophisticated knowledge of the political and legislative environment in Russia.

Preference will be given to projects that do not exceed $150,000.

The contact for this topic is Henry Scott, (202) 619–5327, *hscott@pd.state.gov.*

Role of Free Press in a Modern Market Economy

Single Country Projects for Russia Only

In modern market economies, consumers and investors rely on a free press to alert them to opportunities, warn them of potential fraud, and inform them of the consequences of their purchases. In Russia, official pressure and sponsorship of news reports diminishes the media's value as a source of objective information. As a result, consumers and investors have difficulty making informed choices about contracts or other transactions, particularly in the absence of effective regulation. The Bureau is interested in proposals that would increase appreciation of a free, objective press among regional government officials in Russia. Proposals should target regional government leaders, either elected officials or civil servants or a combination of both, for participation in the program. Proposals should demonstrate the applicant's understanding of the importance that Russian regional governments place on economic development, and recruitment and training components should appeal to this priority.

Activities must include both a U.S.-based training program(s) and in-country activities. U.S.-based programs should include sessions to introduce participants to the role of the independent media in the U.S. and its relationship with the government. The U.S. program should include a combination of meetings, lectures, interactive sessions, visits to relevant institutions and organizations, and individual meetings. The Bureau encourages applicants to enlist experienced U.S. politicians in the stateside program who can emphasize the benefits of a free press to Russian officials in a credible manner. In-country activities may include workshops and seminars that complement the information and training presented to participants in the United States. Applicants must work closely with the Public Affairs Section in Moscow to coordinate all activities, including participant selection.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

Diplomatic Training

Single Country Projects for Tajikistan Only

The Bureau is seeking proposals that will offer training to representatives of Tajikistan's Ministry of Foreign Affairs (MFA). Programs will offer training and assistance to the Tajik MFA to help create a professional Tajik foreign service that can effectively represent the country abroad.

Tajik diplomats, including deputy chiefs of mission and other senior, mid-level and junior officials, should be trained in the essentials of foreign policy formulation and the functions of an embassy. Training will be based on courses offered to U.S. diplomats and will incorporate such practical and substantive themes as: International politics (including international organizations and lending institutions); the structure and operation of an embassy; professional ethics; management skills; analytical reporting; negotiation skills; media relations and public diplomacy; trade promotion; communication with the host government (including need for local language training); management of VIP visits; and other relevant topics.

The program should include in-country training as well as training in the United States. Program activity may incorporate training-of-trainers, workshops, internships and site visits and should reflect a practical understanding of the current political, economic and social climate in Tajikistan. Training should balance formal presentations, discussions and group exercises and should be targeted at diplomats with a wide range of experience, including some who are new to the profession. The Tajik MFA will nominate participants. The U.S. Embassy in Dushanbe will make final participant selection. Applicants are required to work closely with the Public Affairs Section in Dushanbe during all program planning and implementation. Language issues must also be addressed throughout the proposal.

The total funding available for Diplomatic Training in Tajikistan is $250,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

Partnerships for Internet-Based Media Outlets

Single Country Projects for Ukraine Only

While the importance of the Internet in Ukraine as a source of news and information is growing, Internet-based media outlets there still face significant challenges in terms of their legal status as ''legitimate'' media outlets and their level of journalistic and management expertise. In order for Internet-based outlets in Ukraine to survive, they need to become viable businesses, as well as credible sources of news and information. The Bureau is seeking proposals for programs that would foster long-term relationships between U.S. Internet-based media outlets and independent, Internet-based media outlets in Ukraine. Within the framework of these partnerships, Ukrainian media professionals would learn how their U.S. partners deal with issues such as management of operations, ethical concerns, and how to operate under existing U.S. legislation governing Internet activities.

Applicants should propose a minimum of two partnerships to be developed. Each Ukrainian media outlet should be matched with an appropriate U.S. media outlet for partnership activities. The names of potential outlets, both in the U.S. and Ukraine, should be provided. Applicants should explain how partnerships will be structured and what activities they will include. Applicants should propose a combination of trips to the U.S. for Ukrainian participants, trips to Ukraine for U.S. participants, and on-going activities and virtual interaction throughout the grant period. While U.S. visits for Ukrainian participants should include consultations, workshops, and interactive meetings, they may also include hands-on internships and/or job shadowing experiences that will build professional expertise and strengthen links between the two partners. Under program activities, applicants should address the following topics: Use of the Internet as a news tool; Web design for Internet-based news services; business and management practices for Internet-based management; journalistic ethics; and licensing and legal issues for Internet-based news outlets. The proposal should identify the individuals who will be responsible for the

partnership at each U.S. media outlet, and should, wherever possible, identify personnel that will participate from both the U.S. and Ukrainian sides. For the visits to Ukraine, activities should focus on complementing those activities conducted in the U.S. and increasing the professional capacity of the Ukrainian participants and their colleagues who may not travel to the U.S. This aspect of the program should also strengthen the sustainable relationship between the two outlets.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

Tolerance

Single Country Projects for Ukraine Only

Proposals should focus on promoting constructive dialogue and reduction of stereotyping, violence and hatred among diverse groups. Projects should focus on minority communities such as the Tatars in Crimea or the Roma in other parts of Ukraine. Projects may be designed and implemented through media outlets, educational institutions, NGOs or other partners. Projects should build a valued working relationship between U.S. and overseas professionals and should develop, test, and result in a training program that can continue after grant support concludes. Proposals should address specific inter-communal conflicts and facilitate dialogue among teachers, professionals, journalists, community activists and local government officials in order to promote better understanding among parties in conflict. Programming should also introduce the evolution of U.S. laws designed to protect minority rights and promote tolerance. Projects should design and conduct a public awareness campaign to help dispel stereotypes and foster acceptance of cultural differences. Travel in both directions, including a hands-on, U.S.-based program with a train the trainer component, should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Kendra Davis, (202) 619–5328, *kldavis@pd.state.gov.*

Press Spokespersons Training

Single Country Projects for Uzbekistan Only

ECA is interested in proposals that provide intensive, hands-on training to Uzbek national and government spokespersons as well as spokespersons from non-governmental entities. Proposals should focus on public affairs and public information as they are handled by government and non-governmental institutions. Program activities should cover such topics as how public affairs offices function in government; the importance of transparency in government; communicating openly with citizens and journalists; crisis communication; strategic planning; press office management; and the provision of accurate, timely information to the public.

Programs should consist of a Washington, DC, component, including meetings with the public affairs offices and spokespersons of federal agencies and departments, as well as shadowing experiences with state or local governments and non-governmental organizations. A train-the-trainers component should be included. In-country workshops should also be implemented, during which participants from the U.S. program will work as co-trainers and will reach out to a larger audience of governmental and non-governmental spokespersons from Uzbekistan. Media representatives may also participate in the in-country training program.

The Public Affairs Section (PAS) in Tashkent will be responsible for selecting participants through an open, merit-based process designed jointly by the grantee and PAS.

Preference will be given to projects that do not exceed $150,000.

The contact for this theme is Michael George, (202) 619–5330, *mdgeorge@pd.state.gov.*

Central and Eastern Europe

Requests for grant proposals for the following countries will be announced in separate competitions: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia-Montenegro/Kosovo, Slovak Republic and Slovenia. Proposals involving Central and Eastern Europe WILL NOT be accepted under this competition, and if received, will be technically ineligible.

Western Europe

Proposals involving Western Europe will not be accepted under this competition, and if received, will be technically ineligible.

Budget Guidelines and Cost Sharing Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program and must provide a summary budget as well as breakdowns reflecting both administrative and program budgets in the proposal. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Applicants are strongly encouraged to provide cost sharing to the fullest extent possible. State Department Review Panels will consider cost sharing seriously when valuating all proposals.

The following are deemed allowable program costs:

1. Travel. International and domestic airfare (per the ''Fly America Act''), ground transportation, and visas for U.S. participants. (J–1 visas for Bureau-supported participants from Eurasia to travel to the U.S. are issued at no charge.)

2. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. For activities in Eurasia, the Bureau strongly encourages applicants to budget realistic costs that reflect the local economy. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/.*

3. Interpreters. For U.S.-based activities, applicants may hire their own locally-based interpreters or may ask the Bureau to assign U.S. Department of State interpreters. The Office of Citizen Exchanges strongly encourages applicants to use locally-hired interpreters. Typically, one interpreter is provided for every four visitors that require interpreting. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE''); ''home-

program-home'' transportation in the amount of $400 per interpreter; reimbursement for taxi fares; and cell phone usage at $10 per week. If the applicant uses State Department interpreters, salary expenses will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds can not support interpreters who accompany delegations from their home country or travel internationally.

4. Book and cultural allowance. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Such subcontracts should detail the division of responsibilities and proposed costs. Subcontracts should be itemized in the budget.

6. Room rental. Room rental may not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants. The Bureau strongly discourages the use of automatic translation software for the preparation of training materials or any information distributed to the group of participants or network of organizations. Costs for high-quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

8. Equipment. Proposals may include limited costs to purchase equipment for Eurasia-based programming such as computers, fax machines and copy machines. Costs for furniture are not allowed. Equipment costs must be kept to a minimum.

9. Working meal. Only one working meal may be provided during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Wire transfer fees. When necessary, applicants may include costs to transfer funds to partner organizations overseas.

Grantees are urged to research applicable taxes that may be imposed by host governments on these transfers.

13. In-country travel costs for visa processing purposes. Given the new requirements associated with obtaining J–1 visas for Bureau-supported participants, applicants should include costs for participant and/or in-country partner travel and shipping to U.S. embassies or consulates for visa processing purposes, such as interviews and delivery/pick up of DS–2019 forms.

14. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from the Bureau. Proposals should show strong administrative cost-sharing contributions from the applicant, the in-country partner and other sources.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, January 9, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies (total of 11 copies, secured with binder clips) of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EUR–04–33, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Sections at the U.S. embassies for their review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides

that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Ability to Achieve Program Objectives: Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the target countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of in-country partners should be clearly described.

2. Institutional Capacity: The proposal should include (1) the U.S. institution's mission and date of establishment; (2) detailed information about the in-country partner institution's capacity and the history of the U.S. and in-country partnership; (3) an outline of prior awards—U.S. government and private support received for the target theme/region; and (4) descriptions of experienced staff members who will implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. Cost Effectiveness and Cost Sharing: Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, the in-country partner, and other sources should be included in the budget request. Proposal budgets that do not provide cost-sharing will be deemed not competitive in this category.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venues and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. Evaluation: Proposals should include a detailed plan to monitor and evaluate the program. A draft survey questionnaire plus a description of a methodology that will link outcomes to original project objectives should be provided. Successful applicants will be expected to submit intermediate reports after each project component concludes or on a quarterly basis, whichever is less frequent.

6. Post-Grant Activities: Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities should not appear in the proposal budget, but should be outlined in the narrative.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' It is anticipated that funding for this competition will be made available from FY–2003 FREEDOM Support Act resources carried over into FY–2004 for obligation and new FY–2004 resources, pending the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 15, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–26526 Filed 10–20–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4516]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Internet Access and Training Program in the Caucasus, Central Asia and Russia

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Internet Access and Training Program (IATP) in the Caucasus, Central Asia and Russia. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to oversee and carry out IATP operations, including the establishment of new IATP sites, the maintenance and enhancement of existing sites, the development of Internet outreach and educational projects, and engaging ECA alumni and other targeted groups in the IATP. All activities of the IATP will be undertaken in regular and consistent consultation with the Public Affairs Section (PAS) of the U.S. Embassy in each participating country. Applicants may submit proposals to implement the program in only one of the three regions, (Russia, Caucasus, Central Asia) or in two or all three regions. **IMPORTANT NOTE:** This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

Overview

The Internet Access and Training Program (IATP) was established in 1995 with funding from the FREEDOM Support Act (FSA) to multiply the U.S. Government's investment in exchanges by supporting and maintaining contact with the over 100,000 Eurasian alumni of U.S. Government-funded programs through a network of public Internet access sites in twelve countries of Eurasia. IATP centers extend the exchange experience and expand avenues of mutual understanding by continuing to engage alumni and other targeted groups in U.S. based programs and dialogues. In Eurasia, where Internet access and freedom of information is often restricted by economic and political factors, IATP public access Internet sites allow USG exchange alumni to maintain contact with their host institutions and colleagues in the United States and across their home region, as well as with U.S. government officials and U.S. exchange NGOs, while maintaining access to world wide information centers. They also serve as catalysts for alumni action by furthering the ability of alumni to introduce American values and practices into their home societies. The IATP centers train alumni in practical and meaningful uses of the Internet, including how to create a website, how to design distance learning courses, publish journals and use databases. Exchange alumni also design courses and lead training sessions at the centers to transfer their knowledge and skills to their home communities. IATP sites are most often located at public libraries and at universities that provide unrestricted access to USG exchange alumni and other key individuals, such as educators, NGO staff members and journalists.

The main components of this program for which grant funding is provided are:

1. Enhancement of existing IATP sites.
2. Maintenance of existing IATP sites.
3. Establishment of new IATP sites.
4. Outreach and educational activities at IATP sites.
5. Monitoring of IATP activities.
6. Evaluation of IATP activities, including the sustainability of open access to information and Internet training.

Subject to the availability of funds, it is anticipated that the grants will begin on or about May 1, 2004. The grant period should be fifteen to twenty-four months. Please refer to the Solicitation Package for further information.

Budget Guidelines

All organizations applying under this competition must demonstrate in their proposal narrative a minimum of four years experience managing and conducting international exchange programs. Bureau grant guidelines require that organizations with less than four years of experience managing and conducting international exchange programs be limited to $60,000. Since the grant or grants under the competition will exceed the $60,000 ceiling, organizations with less than four years experience, per above, are not eligible to apply under this competition.

Applicants must submit a comprehensive budget for each program. ECA anticipates awarding $4,795,000 ($340,000 in Armenia, $420,000 in Azerbaijan, $345,000 in Georgia in the Caucasus; $380,000 in Kazakhstan, $345,000 in Kyrgyzstan, $445,000 in Tajikistan, $150,000 in Turkmenistan, $380,000 in Uzbekistan in Central Asia; $1,990,000 in Russia) to support the program and administrative costs required to implement this program. ECA encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with ECA concerning this RFGP should reference the above title and number *ECA/A/E/EUR–04–04.*

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 205–0525, fax (202) 260–7985, *exchanges@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify ECA Senior Program Manager Ilo-Mai Harding on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Department of State staff may not discuss this competition with applicants until the proposal review process has been completed.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu/htm* for additional information on how to comply with this new directive.

To Download a Solicitation Package via Internet

The Solicitation Package may be downloaded from ECA's Web site at

http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Monday, December 8, 2003. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–04–04,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicant must also submit the ''Executive Summary'' and ''Proposal Narrative'' section of the proposals in text (.txt) format on a PC-formatted disc. The Bureau will provide these files electronically to the Public Affairs Section at U.S. Embassies for their review.

Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' ECA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

For your information only:

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

ECA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

All eligible proposals will be reviewed by the program office, as well as by the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and ECA regulations and guidelines and forwarded to Department of State grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with ECA's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to ECA's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A relevant work plan should demonstrate substantive undertakings and logistical capacity. The work plan should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The IATP should strengthen long-term mutual understanding, including maximum sharing of information and Internet expertise. The applicant organization should include ECA alumni as a resource for facilitating IATP outreach and education.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through geographic distribution of IATP sites and outreach to groups identified in consultation with PAS officers in each region.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful administration of Internet programs. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Project Evaluation:* The proposal should include a plan to evaluate the success of the IATP. ECA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The applicant organization will be expected to submit periodic progress reports that elucidate the successes achieved, and obstacles encountered, by the IATP.

6. *Cost-Effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

7. *Follow-on and Sustainability:* The proposal should provide a plan for continued follow-on activity that ensures that ECA-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place. The proposal should address the feasibility of sustaining viable IATP sites and training seminars after ECA funding ends.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided in part through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 15, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–26525 Filed 10–20–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, Manistee County Blacker Airport, Manistee, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the exchange of the airport property. The proposal consists of three parcels, Parcel 9 = 40.0 acres, Parcel 10 = 40.0 acres and Parcel 11 and 12 = 40.0 acres totaling approximately 120.0 acres. The land was originally purchased by the County with state/local funds in 1997/1998.

There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land will be used to increase the Manistee River State Game Area by 44 acres or 58 percent. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the Federal Register 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945/FAX Number: 734–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Manistee County/Blacker Airport, Manistee, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in the City of Manistee, County of Manistee, Michigan, and described as follows:

PARCEL 9: T22N, R16W, Sec. 34: NE ¼ OF SW ¼, 40 acres

PARCEL 10: T22N, R16W, Sec. 34: NW ¼ of SE ¼, 40 acres

PARCEL 11 & 12: T22N, R16W, Sec. 34: NE ¼ OF SE ¼, 40 acres

Issued in Romulus, Michigan on September 22, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–26561 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Chartering Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of changes in public meeting.

SUMMARY: This notice announces the cancellation of the Charting Group meeting associated with of the Federal Aviation Administration's Government/Industry Aeronautical Charting Forum (ACF). The Instrument Procedures Group will meet as originally planned.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group will meet as planned October 20 and 21, 2003 from 9 a.m. to 4:30 p.m. The Chart Group meeting originally scheduled for October 22 and 23, 2003 from 9 a.m. to 4:30 p.m. is cancelled.

ADDRESSES: The meeting will be held at the FAA National Aeronautical Charting Office, AVN–500, 1325 East-West

Highway, Silver Spring, SSMC 2, Room 2358, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., PO Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528. For information relating to the cancellation of the Charting Group meeting, contact Richard V. Powell, FAA, Air Traffic Airspace Management, ATA–100, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8790, fax: (202) 293–4266.

Issued in Washington, DC, on October 15, 2003.

Richard V. Powell,

Chair, Government/Industry Aeronautical Charting Forum.

[FR Doc. 03–26562 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: Denver, Broomfield, Adams, Jefferson and Boulder Counties, CO

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA and FTA are issuing this notice to advise the public that an Environmental Impact Statement and a Section 4(f) Evaluation (EIS/4(f)) will be prepared for transportation improvements in the City and County of Denver, City and County of Broomfield, Adams County, Jefferson County, Boulder County, the City of Westminster, City of Broomfield, Town of Superior, City of Louisville, and the City of Boulder, Colorado. Improvements will be considered generally between Boulder and Downtown Denver along the US 36 highway alignment, the Burlington Northern and Santa Fe (BNSF) rail line, SH 157 in Boulder and the area around the northern entry of SH 119 northeast of Boulder. The relationships of concurrent projects such as the Northwest Corridor EIS, the North I–25 EIS, the US36/US287 Interchange Environmental Assessment and the Denver Union Station Intermodal Master Plan EIS will also be considered.

The purpose of this notice is to notify interested individuals, organizations, and business entities, affected Native American Tribes, and Federal, State, and local governmental agencies of the intent to prepare an EIS/4(f) and to invite participation in the study. Transportation improvements are needed to meet current and future travel demands and to upgrade the transportation facilities in the corridor consistent with current standards and procedures.

DATES: Written comments on the scope of alternatives and impacts to be considered must be submitted by December 5, 2003 to Marion McCleary, Project Administrator, at the address below.

Project Scoping will be accomplished through coordination with affected parties, stakeholders, organizations, Federal, State, and local agencies; agency Scoping meetings; and through community outreach and public meetings in the project corridor. Meetings will be conducted as follows:

Agency and Public Scoping Meeting, Thursday, October 30, 2003; 7:30 a.m. to 9:30 a.m., Optional Corridor Tour: 9:30 a.m to 11:30 a.m., 4 Garden Center, Lower Level Conference Room, Broomfield, CO 80020.

Public Scoping Meetings, Wednesday, November 12, 2003, 4:30 p.m to 7:30 p.m., Boulder Public Library Auditorium, 1000 Canyon Boulevard, Boulder, Colorado.

Thursday, November 13, 2003, 4:30 p.m. to 7:30 p.m., Front Range Community College, Rocky Mountain Room, 3645 West 112th Avenue, Westminster, Colorado

Information on the time and place of the public Scoping meetings will be provided in the local newspapers and other media outlets.

ADDRESSES: Written comments on the scope of alternatives and impacts to be considered should be sent to: Marion McCleary, Project Administrator, US 36 Mobility Partnership, c/o URS Corporation, 1225 17th Street, Suite 200, Denver, CO 80202, 303–293–8080, Fax: 303–293–2110, E-mail: *marion_mccleary@urscorp.com.*

FOR FURTHER INFORMATION CONTACT:

- Shaun Cutting, Senior Operations Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO 80228, Telephone: (303) 969–6730 extension 369.
- Dave Beckhouse, Community Planner, FTA, 216 16th Street, Suite 650, Denver, CO, 80202, Telephone: (303) 844–4266.
- Jeff Wassenaar, Colorado Department of Transportation, Region 6, 3401 Quebec Street, Suite 800, Denver, CO, 80207, Telephone: (303) 370–2052 extension 219.
- Scott Weeks, Regional Transportation District, 1600 Blake Street, Denver, CO, 80202, Telephone: (303) 299–2221.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/4(f) should be directed to Shaun Cutting or Dave Beckhouse at the addresses previously provided.

To be placed on the public mailing list to receive additional project information, contact Marion McCleary at the address previously provided.

SUPPLEMENTARY INFORMATION:

I. Scoping of Project

The FHWA and FTA in cooperation with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD) will prepare an Environmental Impact Statement and Section 4(f) Evaluation (EIS/4(f)) for transportation improvements on the US 36 Corridor (the Corridor) between Boulder and the Interstate 25 (I–25)/US 36 Interchange and a transit connection between Denver Union Station and Boulder.

The EIS/4(f) will evaluate improvement alternatives and the No-Action alternative based on the Purpose and Need developed for the corridor. Alternatives will be developed through an extensive agency and community outreach process. A full range of potential alignments and corridors will be considered for both highway and transit alternatives. The US 36 Corridor EIS/4(f) evaluation will result in a decision about which transportation projects, if any, will be built to improve safety and address congestion in the Corridor.

II. Description of Study Area and Project Need

The study area for the EIS/4(f) is generally along the alignments of US 36 from I–25 to Boulder, SH 157/Foothills Parkway from US 36 to SH 119, and along the BNSF Railroad line from downtown Denver to Boulder. The purpose of the proposed action is to decrease congestion, and improve safety, access, and mobility. Original construction of US 36 was initiated in 1951 and completed as a four-lane toll road. The cross section is still four lanes throughout most of the highway length today. During the same period, population and employment growth in

the areas of the corridor have substantially increased travel demands for longer length trips.

III. Alternatives To Be Considered

The alternatives evaluated in the Draft EIS (DEIS) will include, but not be limited to, the alternatives developed in the previously completed US 36 Major Investment Study (MIS), June 2001. These alternatives consisted of Regional Rail on the BNSF alignment (also called Commuter Rail), Bus Rapid Transit (BRT) within the US 36 highway, High Occupancy Vehicle Lanes (HOV) on US 36, Roadway Widening on US 36 and possibly cross streets, Bikeway, Travel Demand Management (TDM), and Intelligent Transportation System (ITS) improvements and transportation management elements in a roughly 25-mile-long corridor, parallel to and including US 36, between downtown Denver and Boulder. The EIS/4(f) will evaluate the use and effects of toll and other user fee methods of finance on the alternatives and the expected travel demand response from such options.

The EIS/4(f) will also evaluate the appropriate end of line and associated facilities and connections into Downtown Denver to Union Station and in Boulder. As part of the transit evaluations, station locations will be studied and identified as appropriate.

The EIS/4(f) will also fully evaluate the No-Action Alternative as a basis of comparison among all alternatives. Other alternatives may be added as a result of scoping and agency coordination efforts.

IV. Probable Effects/Potential Impacts for Analysis

The EIS/4(f) will analyze social, economic, and environmental impacts of the various alternatives. Other major issues to be evaluated include air quality, noise, aesthetics, community cohesion impacts, and possible disruption of neighborhoods, businesses and commercial activities. The subjects and level of detail addressed in the EIS/4(f) will be consistent with the requirements of the joint FTA/FHWA environmental regulations (23 CFR part 771) and the Council on Environmental Quality regulations (40 CFR parts 1500–1508). Among other factors, the EIS/4(f) will evaluate the following:

- Transportation service including future corridor capacity
- Transit ridership and costs
- Traffic movements and changes and associated impacts to local facilities
- Community impacts such as land use, displacements, noise, neighborhood compatibility and aesthetics
- Resource impacts including impacts to historic and archeological resources, cultural resource impacts, natural resource impacts including air quality, wetlands, water quality and wildlife

The proposed impact assessment and evaluation will take into account both positive and negative impacts, direct and indirect impacts, short-term (during the construction period) and long term impacts, and site-specific as well as corridor wide impacts. Mitigation measures will be identified for any adverse environmental impacts that are identified.

Issued on: October 14, 2003.

William C. Jones,

Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

Lee O. Waddleton,

Regional Administrator, Federal Transit Administration, Denver, Colorado.

[FR Doc. 03–26510 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Juneau, AK

AGENCY: Federal Highway Administration (FHWA), Alaska Department of Transportation and Public Facilities (ADOT&PF).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public than an environmental impact statement will be prepared for a second crossing of the Gastineau Channel in Juneau, Alaska. Scoping meetings for the Juneau Second Channel Crossing project will be held in Juneau, Alaska during November 2003.

FOR FURTHER INFORMATION CONTACT: Tim Haugh, Environment/Right-of-Way Programs Manager, Federal Highway Administration, P.O. Box 21648, Juneau, Alaska 99802, (907) 586–7430.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF) and the City and Borough of Juneau (CBJ), will prepare an EIS for a proposed second crossing of the Gastineau Channel in Juneau, Alaska. The proposed Juneau Second Channel Crossing project would involve a new crossing from mainland Juneau to Douglas Island. The project study area includes an approximate nine-mile segment of the Gastineau Channel, from the vicinity of Salmon Creek to the vicinity of the Mendenhall Peninsula/North Douglas Island. Alternatives would vary by location and would include different bridge types that are estimated to be from approximately 0.5 to 1.5 miles in length.

Alternatives have yet to be developed for the project. Any bridge crossing alternatives will meet the reasonable needs of navigation for the Gastineau Channel. The No-build alternative will remain a viable alternative throughout the EIS process. The Second Crossing is considered necessary to: meet the expressed planning intent of the CBJ to facilitate existing and planned development of the CBJ designated ''New Growth Area'' on West Douglas Island in accordance with the CBJ Comprehensive Plan; and to improve transportation network connectivity and access for emergency response.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal. A series of agency and public meetings will be held in Juneau, Alaska throughout the EIS study process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A formal agency scoping meeting and public scoping meetings are planned in Juneau, Alaska during November 2003.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 10, 2003.

Tim A. Haugh,

Environment and Right-of-Way Programs Manager, Juneau, Alaska.

[FR Doc. 03–26437 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16323]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JUSTICE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16323 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before November 20, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16323. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JUSTICE is:

Intended Use: ''Passenger Charters.''

Geographic Region: ''Chesapeake Bay to Florida Coasts and Bahamas.''

Dated: October 15, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–26451 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13355; Notice 2]

Bridgestone/Firestone, Decision That Application for Determination That Noncompliance Is Inconsequential to Motor Vehicle Safety Is Moot

Bridgestone/Firestone has advised the National Highway Traffic Safety Administration (NHTSA) that it determined that approximately 4,700 P235/75R15 Dayton Timberline A/T tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 7, 2002, in the **Federal Register** (67 FR 62522). NHTSA received no comment on this application.

FMVSS No. 109, S4.3(b) and S4.3(c), require that each tire shall have permanently molded the maximum permissible inflation pressure and the maximum load rating of the tire, respectively. The Sao Paulo, Brazil plant produced noncompliant tires during weeks 40 through and including week 49 of the year 2001. The subject tires were mislabeled as ''Extra Load.'' The actual markings on the subject tires are:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press, Extra Load

The correct markings should be:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press.

Bridgestone/Firestone believes that the noncompliance is inconsequential as it relates to motor vehicle safety for the following stated reasons: ''First, the subject tires with the exception of the ''Extra Load'' marking meet all the requirements of 49 CFR Part (sic) 109. Second, the subject tires were tested by Bridgestone/Firestone and meet the requirements of high speed, endurance, strength, and bead unseat as defined in 49 CFR Part (sic) 109 for the ''Extra Load'' designation. Third, the subject tires as shipped from the manufacturing plant were identified by tire labels and article number as standard load. Thus, the potential for sale of these tires as ''Extra Load'' is very small.''

This mislabeling does not constitute a noncompliance with FMVSS No. 109. The standard has no requirement that a tire be labeled with the words ''extra load'' even when it is designed to accommodate a greater load than a standard tire of the same size. The correct maximum load rating and the correct maximum inflation pressure are properly molded on the tires. These two values, along with other tire information such as tire size, are used by consumers in selecting replacement tires.

In consideration of the foregoing, NHTSA has decided that the tires in question do not exhibit a noncompliance with an FMVSS. Therefore, Bridgestone/Firestone's petition for an inconsequentiality exemption is moot.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 14, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–26509 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–14826; Notice 1]

Nissan North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Nissan North America (Nissan) has determined that the side marker lamps in approximately 302,000 model year 2002 and 2003 Nissan Altima vehicles do not meet certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices and Associated Equipment.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Nissan has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' A copy of this petition can be found in this docket.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS 108 S5.1.1 specifies that each vehicle shall be equipped with certain lamps and reflective devices. Nissan stated that extensive testing demonstrates that the subject side marker lamps consistently meet the light intensity requirements at the required test points. However, Nissan determined that the front side marker lamps may not meet the requirement to sustain the light intensity when measured between two of the nine test points in a scan test. Nissan believes that the noncompliance of the side lamps does not affect its primary purpose, which is to be sufficiently visible to identify the front edge of the vehicle at night. Nissan stated that the reported noncompliance is inconsequential as it relates to motor vehicle safety.

Its petition may be read by visiting the above mentioned docket using the Docket Management System described below.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: November 20, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 14, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–26508 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34409]

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Burlington Shortline Railroad, Inc., d/b/a/ Burlington Junction Railway (BJRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease, from The Burlington Northern and Santa Fe Railway Company (BNSF), and operate two segments of rail line known as (1) the Marblehead line and (2) the Moorman Lead line. The Marblehead line extends approximately 5.13 miles from BNSF milepost 261.32 near Quincy, IL, to BNSF milepost 266.43 near Marblehead, IL. The Moorman Lead line extends 5,100 feet southwesterly from BNSF milepost 258.2 near Quincy.

Consummation of this transaction was expected to occur on or about October 4, 2003.

BJRY certifies that its projected annual revenues as a result of this transaction will not exceed $5 million and that the transaction will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34409, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: October 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26289 Filed 10–20–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34413]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Elgin, Joliet & Eastern Railway Company

Pursuant to a written trackage rights agreement dated September 22, 2003, Elgin, Joliet & Eastern Railway Company has agreed to grant certain non-exclusive trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between EJE milepost 1.6 at Joliet, IL, and EJE milepost 20.6 at Eola, IL, a distance of approximately 19 miles.

Although BNSF states that the transaction was scheduled to be consummated on October 7, 2003, the earliest the transaction could be consummated was October 8, 2003 (7 days after filing the notice).

The purpose of the trackage rights is to allow BNSF to operate more efficiently.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34413, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: October 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26496 Filed 10–20–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Medical Research Service Merit Review Committee will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Aging and Clinical Geriatrics	November 5, 2003	Holiday Inn Central.
Clinical Research Program	November 17, 2003	Marriott Residence Inn.
Immunology	November 18–19, 2003	Marriott Residence Inn.
Endocrinology-A	November 20–21, 2003	Marriott Residence Inn.
General Medical Science	November 24, 2003	Governor's House.
Mental Health and Behav Sci	December 1–2, 2003	Holiday Inn Central.
Surgery	December 8, 2003	Governor's House.
Infectious Diseases	December 11–12, 2003	Holiday Inn Central.
Endocrinology-B	December 18–19, 2003	Holiday Inn Central.

The addresses of the hotels are:

Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC.

Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC.

Marriott Residence Inn (Thomas Circle), 1199 Vermont Avenue, NW., Washington, DC.

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–453, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service (121F), Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: October 10, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–26435 Filed 10–20–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Research and Development Cooperative Studies Evaluation Committee will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202, on December 16 and 17, 2003. The sessions will be held on December 16 from 8 a.m. to 3:45 p.m. and December 17 from 7:30 a.m. to 2 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

On December 16, the Committee will review the following studies submitted: Efficacy of GM–CSF to Reduce Incidence and Duration of Mucositis Associated with Concomitant Chemoradiation Therapy in Head and Neck Cancer Patients; Integrating Practice Guidelines for Smoking Cessation into Mental Health Care for Post-Traumatic Stress Disorder; Risperidone Treatment for Refractory Combat-Related Post-Traumatic Stress Disorder; and A Randomized, Multicenter, Double-Blind, Placebo-Controlled Trial of DL-Alpha-tocopherol for the Treatment of Functional Decline in Outpatients with Alzheimer's Disease on Donepezil. On December 17, the Committee will review the study submitted on S-Adenosylmethionine Improves Survival in Alcoholic Cirrhosis.

The meeting will be open to the public December 16 from 8 a.m. to 8:30 a.m. to discuss the general status of the program. Those who plan to attend should contact Mrs. Karen Hood, Staff Assistant, Department of Veterans Affairs, Washington, DC, at (202) 254–0276. The meeting will be closed December 16 from 8:30 a.m. to 3:45 p.m. and December 17 from 7:30 a.m. to 2 p.m. That portion of the meeting involves committee business that falls within the scope of provisions set forth in section 10(d) of Public Law 92–463, as amended by sections 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During the closed session of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: October 14, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–26436 Filed 10–20–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 203

Tuesday, October 21, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–49–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

Correction

In proposed rule document 03–25978 beginning on page 53947 in the issue of Wednesday, October 15, 2003, make the following correction:

On page 59347, in the third column, in the **DATES** section, in the second line, ''November 14, 2004'' should read ''November 14, 2003''.

[FR Doc. C3–25978 Filed 10–20–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 21, 2003

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) amendments to the sentencing guidelines made pursuant to the directive in section 401(m) of the PROTECT Act, Public Law 108–21; and (2) conforming amendments to the congressional amendments to the guidelines made directly by the PROTECT Act and effective on May 30, 2003.

SUMMARY: Section 401(m) of the PROTECT Act requires the Commission, ''[n]ot later than 180 days after the enactment of [the] Act'' (*i.e.*, October 27, 2003) to ''review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary.'' Section 401(m) also requires the Commission to promulgate, pursuant to section 994 of title 28, United States Code, amendments that ''ensure that the incidence of downward departures are substantially reduced,'' that authorize a downward departure of ''not more than four levels if the Government files a motion for such departure pursuant to an early disposition program,'' and that make any conforming changes necessitated by the Act. Pursuant to section 401(m) of the Act and section 994 of title 28, United States Code, the Commission has promulgated amendments to the following: (1)(A) Chapter Five, Part K, including §§ 5K2.0 (Grounds for Departure), 5K2.10 (Victim's Conduct), 5K2.12 (Coercion and Duress), 5K1.13 (Diminished Capacity), and 5K2.20 (Aberrant Behavior), and the promulgation of a new policy statement, § 5K3.1 (Early Disposition Programs); (B) Chapter Five, Part H, including §§ 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), 5H1.6 (Family Ties and Responsibilities), 5H1.7 (Role in the Offense), and 5H1.8 (Criminal History); (C) §§ 4A1.1 (Criminal History Category) and 4A1.3 (Departures Based on Inadequacy of Criminal History Category); (D) § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases); (E) Chapter One, Part A, including promulgation of a new guideline, § 1A1.1 (Authority); (F) § 6B1.2 (Standards for Acceptance of Plea Agreements); and (G) § 1B1.1 (Application Instructions); and (2) § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint) in order to make conforming changes necessitated by the congressional amendments to the guidelines made directly by the PROTECT Act and effective on May 30, 2003.

Section 994(x) of title 28, United States Code, requires the Commission to comply with the notice and comment procedures set forth in 5 U.S.C. 553. Section 553 provides, however, a ''good cause'' exception to the general notice and comment requirements, including the requirement that notice of final agency action be published not later than 30 days before the effective date of that action, if the ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b), (d)(3). The 180-day deadline noted in the previous paragraph with respect to promulgation of these amendments, the extensive nature of these amendments, and limited Commission resources made it impracticable to publish the amendments in the **Federal Register** within the otherwise applicable 30-day period. The Commission therefore had good cause not to publish these amendments within that time period.

DATES: The effective date for the amendments set forth in this notice is October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.* The *Guidelines Manual* effective November 1, 2003, will incorporate the amendments set forth in this notice and may be accessed through the Commission's Web site as well. Please note that due to the timing of the promulgation of these amendments and the time required for publication of the *Guidelines Manual,* the Commission will be unable to distribute copies of the *Guidelines Manual* before November 1, 2003. They will be distributed as soon as practicable thereafter.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Diana E. Murphy,

Chair.

1. Amendment: Section 5K2.0 is amended to read as follows:

'' 5K2.0. Grounds for Departure (Policy Statement)

(a) *Upward Departures in General and Downward Departures in Criminal Cases Other Than Child Crimes and Sexual Offenses.*—

(1) *In General.*—The sentencing court may depart from the applicable guideline range if—

(A) in the case of offenses other than child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(1), that there exists an aggravating or mitigating circumstance; or

(B) in the case of child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(2)(A)(i), that there exists an aggravating circumstance, of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C. 3553(a)(2), should result in a sentence different from that described.

(2) *Departures Based on Circumstances of a Kind not Adequately Taken into Consideration.*—

(A) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2 (Other Grounds for Departure)) identifies some of the circumstances that the Commission may have not adequately taken into consideration in determining the applicable guideline range (*e.g.*, as a specific offense characteristic or other adjustment). If any such circumstance is present in the case and has not adequately been taken into consideration in determining the applicable guideline range, a departure consistent with 18 U.S.C. 3553(b) and the provisions of this subpart may be warranted.

(B) *Unidentified Circumstances.*—A departure may be warranted in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that nevertheless is relevant to determining the appropriate sentence.

(3) *Departures Based on Circumstances Present to a Degree not Adequately Taken into Consideration.*—A departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration in determining the guideline range, if the court determines that such circumstance is present in the offense to a degree substantially in excess of, or substantially below, that which ordinarily is involved in that kind of offense.

(4) *Departures Based on not Ordinarily Relevant Offender Characteristics and Other Circumstances.*—An offender characteristic or other circumstance identified in Chapter Five, Part H (Offender Characteristics) or elsewhere in the guidelines as not ordinarily relevant in determining whether a departure is warranted may be relevant to this determination only if such offender characteristic or other circumstance is present to an exceptional degree.

(b) *Downward Departures in Child Crimes and Sexual Offenses.*—Under 18 U.S.C. 3553(b)(2)(A)(ii), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) Has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) Has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) Should result in a sentence different from that described.

The grounds enumerated in this Part K of Chapter Five are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.

(c) *Limitation on Departures Based on Multiple Circumstances.*—The court may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which independently is sufficient to provide a basis for departure, only if—

(1) Such offender characteristics or other circumstances, taken together, make the case an exceptional one; and

(2) Each such offender characteristic or other circumstance is—

(A) present to a substantial degree; and

(B) identified in the guidelines as a permissible ground for departure, even if such offender characteristic or other circumstance is not ordinarily relevant to a determination of whether a departure is warranted.

(d) *Prohibited Departures.*—Notwithstanding subsections (a) and (b) of this policy statement, or any other provision in the guidelines, the court may not depart from the applicable guideline range based on any of the following circumstances:

(1) Any circumstance specifically prohibited as a ground for departure in §§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the third and last sentences of 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), the last sentence of 5K2.12 (Coercion and Duress), and 5K2.19 (Post-Sentencing Rehabilitative Efforts).

(2) The defendant's acceptance of responsibility for the offense, which may be taken into account only under 3E1.1 (Acceptance of Responsibility).

(3) The defendant's aggravating or mitigating role in the offense, which may be taken into account only under § 3B1.1 (Aggravating Role) or § 3B1.2 (Mitigating Role), respectively.

(4) The defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense (*i.e.*, a departure may not be based merely on the fact that the defendant decided to plead guilty or to enter into a plea agreement, but a departure may be based on justifiable, non-prohibited reasons as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreement).

(5) The defendant's fulfillment of restitution obligations only to the extent required by law including the guidelines (*i.e.*, a departure may not be based on unexceptional efforts to remedy the harm caused by the offense).

(6) Any other circumstance specifically prohibited as a ground for departure in the guidelines.

(e) *Requirement of Specific Written Reasons for Departure.*—If the court departs from the applicable guideline range, it shall state, pursuant to 18 U.S.C. § 3553(c), its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received in camera, shall state those reasons with specificity in the written judgment and commitment order.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement:

'Circumstance' includes, as appropriate, an offender characteristic or any other offense factor.

'Depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Scope of this Policy Statement.*—

(A) Departures Covered by this Policy Statement.—This policy statement covers departures from the applicable guideline range based on offense characteristics or offender characteristics of a kind, or to a degree, not adequately taken into consideration in determining that range. *See* 18 U.S.C. § 3553(b).

Subsection (a) of this policy statement applies to upward departures in all cases covered by the guidelines and to downward departures in all such cases except for downward departures in child crimes and sexual offenses.

Subsection (b) of this policy statement applies only to downward departures in child crimes and sexual offenses.

(B) *Departures Covered by Other Guidelines.*—This policy statement does not cover the following departures, which are addressed elsewhere in the guidelines: (i) Departures based on the defendant's criminal history (*see* Chapter Four (Criminal History and Criminal Livelihood), particularly § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)); (ii) departures based on the defendant's substantial assistance to the authorities (*see* § 5K1.1 (Substantial Assistance to Authorities)); and (iii) departures based on early disposition programs (*see* § 5K3.1 (Early Disposition Programs)).

3. *Kinds and Expected Frequency of Departures under Subsection (a).*—As set forth in subsection (a), there generally are two kinds of departures

from the guidelines based on offense characteristics and/or offender characteristics: (A) departures based on circumstances of a kind not adequately taken into consideration in the guidelines; and (B) departures based on circumstances that are present to a degree not adequately taken into consideration in the guidelines.

(A) *Departures Based on Circumstances of a Kind Not Adequately Taken into Account in Guidelines.*—Subsection (a)(2) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), of a kind not adequately taken into consideration in the guidelines.

(i) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2) identifies several circumstances that the Commission may have not adequately taken into consideration in setting the offense level for certain cases. Offense guidelines in Chapter Two (Offense Conduct) and adjustments in Chapter Three (Adjustments) sometimes identify circumstances the Commission may have not adequately taken into consideration in setting the offense level for offenses covered by those guidelines. If the offense guideline in Chapter Two or an adjustment in Chapter Three does not adequately take that circumstance into consideration in setting the offense level for the offense, and only to the extent not adequately taken into consideration, a departure based on that circumstance may be warranted.

(ii) *Unidentified Circumstances.*—A case may involve circumstances, in addition to those identified by the guidelines, that have not adequately been taken into consideration by the Commission, and the presence of any such circumstance may warrant departure from the guidelines in that case. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to take into consideration relevant circumstances in sentencing, it is expected that departures based on such unidentified circumstances will occur rarely and only in exceptional cases.

(B) *Departures Based on Circumstances Present to a Degree Not Adequately Taken into Consideration in Guidelines.*—

(i) *In General.*—Subsection (a)(3) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), to a degree not adequately taken into consideration in the guidelines. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to determine the most appropriate weight to be accorded the mitigating and aggravating circumstances specified in the guidelines, it is expected that departures based on the weight accorded to any such circumstance will occur rarely and only in exceptional cases.

(ii) *Examples.*—As set forth in subsection (a)(3), if the applicable offense guideline and adjustments take into consideration a circumstance identified in this subpart, departure is warranted only if the circumstance is present to a degree substantially in excess of that which ordinarily is involved in the offense. Accordingly, a departure pursuant to § 5K2.7 for the disruption of a governmental function would have to be substantial to warrant departure from the guidelines when the applicable offense guideline is bribery or obstruction of justice. When the guideline covering the mailing of injurious articles is applicable, however, and the offense caused disruption of a governmental function, departure from the applicable guideline range more readily would be appropriate. Similarly, physical injury would not warrant departure from the guidelines when the robbery offense guideline is applicable because the robbery guideline includes a specific adjustment based on the extent of any injury. However, because the robbery guideline does not deal with injury to more than one victim, departure may be warranted if several persons were injured.

(C) *Departures Based on Circumstances Identified as Not Ordinarily Relevant.*—Because certain circumstances are specified in the guidelines as not ordinarily relevant to sentencing (see, *e.g.*, Chapter Five, Part H (Specific Offender Characteristics)), a departure based on any one of such circumstances should occur only in exceptional cases, and only if the circumstance is present in the case to an exceptional degree. If two or more of such circumstances each is present in the case to a substantial degree, however, and taken together make the case an exceptional one, the court may consider whether a departure would be warranted pursuant to subsection (c). Departures based on a combination of not ordinarily relevant circumstances that are present to a substantial degree should occur extremely rarely and only in exceptional cases.

In addition, as required by subsection (e), each circumstance forming the basis for a departure described in this subdivision shall be stated with specificity in the written judgment and commitment order.

4. *Downward Departures in Child Crimes and Sexual Offenses.*—

(A) *Definition.*—For purposes of this policy statement, the term child crimes and sexual offenses' means offenses under any of the following: 18 U.S.C. 1201 (involving a minor victim), 18 U.S.C. 1591, or chapter 71, 109A, 110, or 117 of title 18, United States Code.

(B) *Standard for Departure.*—

(i) *Requirement of Affirmative and Specific Identification of Departure Ground.*—The standard for a downward departure in child crimes and sexual offenses differs from the standard for other departures under this policy statement in that it includes a requirement, set forth in 18 U.S.C. 3553(b)(2)(A)(ii)(I) and subsection (b)(1) of this guideline, that any mitigating circumstance that forms the basis for such a downward departure be affirmatively and specifically identified as a ground for downward departure in this part (*i.e.*, Chapter Five, Part K).

(ii) *Application of Subsection (b)(2).*—The commentary in Application Note 3 of this policy statement, except for the commentary in Application Note 3(A)(ii) relating to unidentified circumstances, shall apply to the court's determination of whether a case meets the requirement, set forth in subsection 18 U.S.C. 3553(b)(2)(A)(ii)(II) and subsection (b)(2) of this policy statement, that the mitigating circumstance forming the basis for a downward departure in child crimes and sexual offenses be of kind, or to a degree, not adequately taken into consideration by the Commission.

5. *Departures Based on Plea Agreements.*—Subsection (d)(4) prohibits a downward departure based only on the defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense. Even though a departure may not be based merely on the fact that the defendant agreed to plead guilty or enter a plea agreement, a departure may be based on justifiable, non-prohibited reasons for departure as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreements). In cases in which the court departs based on such reasons as set forth in the plea agreement, the court must state the reasons for departure with specificity in the written judgment and commitment order, as required by subsection (e).

Background: This policy statement sets forth the standards for departing from the applicable guideline range based on offense and offender characteristics of a kind, or to a degree, not adequately considered by the Commission. Circumstances the Commission has determined are not ordinarily relevant to determining whether a departure is warranted or are prohibited as bases for departure are addressed in Chapter Five, Part H (Offender Characteristics) and in this policy statement. Other departures, such as those based on the defendant's criminal history, the defendant's substantial assistance to authorities, and early disposition programs, are addressed elsewhere in the guidelines.

As acknowledged by Congress in the Sentencing Reform Act and by the Commission when the first set of guidelines was promulgated, 'it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. (*See* Historical Note to § 1A1.1 (Authority)). Departures, therefore, perform an integral function in the sentencing guideline system. Departures permit courts to impose an appropriate sentence in the exceptional case in which mechanical application of the guidelines would fail to achieve the statutory purposes and goals of sentencing. Departures also help maintain 'sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices. 28 U.S.C. 991(b)(1)(B). By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, along with appellate cases reviewing these departures, the Commission can further refine the guidelines to specify more precisely when departures should and should not be permitted.

As reaffirmed in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Act of 2003 (the PROTECT Act, Public Law 108–21), circumstances warranting departure should be rare. Departures were never intended to permit sentencing courts to substitute their policy judgments for those of Congress and the Sentencing Commission. Departure in such circumstances would produce unwarranted sentencing disparity, which the Sentencing Reform Act was designed to avoid.

In order for appellate courts to fulfill their statutory duties under 18 U.S.C. 3742 and for the Commission to fulfill its ongoing responsibility to refine the guidelines in light of information it receives on departures, it is essential that sentencing courts state with specificity the reasons for departure, as required by the PROTECT Act.

This policy statement, including its commentary, was substantially revised, effective October 27, 2003, in response to directives contained in the PROTECT Act, particularly the directive in section 401(m) of that Act to—

'(1) Review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced;

(B) a policy statement authorizing a departure pursuant to an early disposition program; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission necessitated by the Act, including a revision of * * * section 5K2.0'.

The substantial revision of this policy statement in response to the PROTECT Act was intended to refine the standards applicable to departures while giving due regard for concepts, such as the 'heartland', that have evolved in departure jurisprudence over time.

Section 401(b)(1) of the PROTECT Act directly amended this policy statement to add subsection (b), effective April 30, 2003.''.

Part II: Departures Under Chapter Five, Part H

The Introductory Commentary of Chapter 5, Part H, is amended to read as follows:

Introductory Commentary

The following policy statements address the relevance of certain offender characteristics to the determination of whether a sentence should be outside the applicable guideline range and, in certain cases, to the determination of a sentence within the applicable guideline range. Under 28 U.S.C. 994(d), the Commission is directed to consider whether certain specific offender characteristics 'have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence' and to take them into account only to the extent they are determined to be relevant by the Commission.

The Commission has determined that certain circumstances are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence (*e.g.*, the appropriate conditions of probation or supervised release). Furthermore, although these circumstances are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range, they may be relevant to this determination in exceptional cases. They also may be relevant if a combination of such circumstances makes the case an exceptional one, but only if each such circumstance is identified as an affirmative ground for departure and is present in the case to a substantial degree. See § 5K2.0 (Grounds for Departure).

In addition, 28 U.S.C. 994(e) requires the Commission to assure that its guidelines and policy statements reflect the general inappropriateness of considering the defendant's education, vocational skills, employment record, and family ties and responsibilities in determining whether a term of imprisonment should be imposed or the length of a term of imprisonment.''.

Section 5H1.4 is amended to read as follows:

''§ 5H1.4. Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction (Policy Statement)

Physical condition or appearance, including physique, is not ordinarily relevant in determining whether a departure may be warranted. However, an extraordinary physical impairment may be a reason to depart downward; *e.g.*, in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

Drug or alcohol dependence or abuse is not a reason for a downward departure. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program (see § 5D1.3(d)(4)). If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for

the supervisory body to judge the success of the program.

Similarly, where a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see § 5B1.3(d)(4)).

Addiction to gambling is not a reason for a downward departure.''.

Section 5H1.6 is amended to read as follows:

''5H1.6. Family Ties and Responsibilities (Policy Statement)

Family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

Commentary

Application Note:

1. *Circumstances to Consider.*—

(A) *In General.*—In determining whether a departure is warranted under this policy statement, the court shall consider the following non-exhaustive list of circumstances:

(i) The seriousness of the offense.

(ii) The involvement in the offense, if any, of members of the defendant's family.

(iii) The danger, if any, to members of the defendant's family as a result of the offense.

(B) *Departures Based on Loss of Caretaking or Financial Support.*—A departure under this policy statement based on the loss of caretaking or financial support of the defendant's family requires, in addition to the court's consideration of the non-exhaustive list of circumstances in subdivision (A), the presence of the following circumstances:

(i) The defendant's service of a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family.

(ii) The loss of caretaking or financial support substantially exceeds the harm ordinarily incident to incarceration for a similarly situated defendant. For example, the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a basis for departure because such hardship or suffering is of a sort ordinarily incident to incarceration.

(iii) The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant's caretaking or financial support irreplaceable to the defendant's family.

(iv) The departure effectively will address the loss of caretaking or financial support.''.

Section 5H1.7 is amended to read as follows:

''§ 5H1.7. Role in the Offense (Policy Statement)

A defendant's role in the offense is relevant in determining the applicable guideline range (see Chapter Three, Part B (Role in the Offense)) but is not a basis for departing from that range (see subsection (d) of § 5K2.0 (Grounds for Departures)).''.

Section 5H1.8 is amended to read as follows:

''§ 5H1.8. Criminal History (Policy Statement)

A defendant's criminal history is relevant in determining the applicable criminal history category. See Chapter Four (Criminal History and Criminal Livelihood). For grounds of departure based on the defendant's criminal history, see § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).''.

Part III. Other Departures Under Chapter Five, Part K

Section § 5K2.10 is amended to read as follows:

''§ 5K2.10. Victim's Conduct (Policy Statement)

If the victim's wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense. In deciding whether a sentence reduction is warranted, and the extent of such reduction, the court should consider the following:

(1) The size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant.

(2) The persistence of the victim's conduct and any efforts by the defendant to prevent confrontation.

(3) The danger reasonably perceived by the defendant, including the victim's reputation for violence.

(4) The danger actually presented to the defendant by the victim.

(5) Any other relevant conduct by the victim that substantially contributed to the danger presented.

(6) The proportionality and reasonableness of the defendant's response to the victim's provocation.

Victim misconduct ordinarily would not be sufficient to warrant application of this provision in the context of offenses under Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse). In addition, this provision usually would not be relevant in the context of non-violent offenses. There may, however, be unusual circumstances in which substantial victim misconduct would warrant a reduced penalty in the case of a non-violent offense. For example, an extended course of provocation and harassment might lead a defendant to steal or destroy property in retaliation.''.

Section 5K2.12 is amended to read as follows:

''§ 5K2.12. Coercion and Duress (Policy Statement)

If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may decrease the sentence below the applicable guideline range. The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions, on the proportionality of the defendant's actions to the seriousness of coercion, blackmail, or duress involved, and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. Notwithstanding this policy statement, personal financial difficulties and economic pressures upon a trade or business do not warrant a downward departure.''.

Section 5K2.13 is amended to read as follows:

''§ 5K2.13. Diminished Capacity (Policy Statement)

A sentence below the applicable guideline range may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense. Similarly, if a departure is warranted under this policy statement, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

However, the court may not depart below the applicable guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants; (2) the facts and circumstances of the

defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of violence; (3) the defendant's criminal history indicates a need to incarcerate the defendant to protect the public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code.

Commentary

Application Note:

1. *For purposes of this policy statement*—

Significantly reduced mental capacity' means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful.

Background: Section 401(b)(5) of Public Law 108–21 directly amended this policy statement to add subdivision (4), effective April 30, 2003.''.

Section 5K2.20 is amended to read as follows:

''§ 5K2.20. Aberrant Behavior (Policy Statement)

(a) *In General.*—Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, a downward departure may be warranted in an exceptional case if (1) the defendant's criminal conduct meets the requirements of subsection (b); and (2) the departure is not prohibited under subsection (c).

(b) *Requirements.*—The court may depart downward under this policy statement only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

(c) *Prohibitions Based on the Presence of Certain Circumstances.*—The court may not depart downward pursuant to this policy statement if any of the following circumstances are present:

(1) The offense involved serious bodily injury or death.

(2) The defendant discharged a firearm or otherwise used a firearm or a dangerous weapon.

(3) The instant offense of conviction is a serious drug trafficking offense.

(4) The defendant has either of the following: (A) more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood) before application of subsection (b) of 4A1.3 (Departures Based on Inadequacy of Criminal History Category); or (B) a prior federal or state felony conviction, or any other significant prior criminal behavior, regardless of whether the conviction or significant prior criminal behavior is countable under Chapter Four.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement:

'Dangerous weapon,' 'firearm,' 'otherwise used,' and serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

'Serious drug trafficking offense' means any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. 844, that provides for a mandatory minimum term of imprisonment of five years or greater, regardless of whether the defendant meets the criteria of 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases).

2. *Repetitious or Significant, Planned Behavior.*—Repetitious or significant, planned behavior does not meet the requirements of subsection (b). For example, a fraud scheme generally would not meet such requirements because such a scheme usually involves repetitive acts, rather than a single occurrence or single criminal transaction, and significant planning.

3. *Other Circumstances to Consider.*—In determining whether the court should depart under this policy statement, the court may consider the defendant's (A) mental and emotional conditions; (B) employment record; (C) record of prior good works; (D) motivation for committing the offense; and (E) efforts to mitigate the effects of the offense.

Background: Section 401(b)(3) of Public Law 108–21 directly amended subsection (a) of this policy statement, effective April 30, 2003.''.

Part IV: Criminal History

Section 4A1.3 is amended to read as follows:

''§ 4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

(a) *Upward Departures.*—

(1) *Standard for Upward Departure.*—If reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) *Types of Information Forming the Basis for Upward Departure.*—The information described in subsection (a) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (*e.g.*, sentences for foreign and tribal offenses).

(B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

(C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

(D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

(E) Prior similar adult criminal conduct not resulting in a criminal conviction.

(3) *Prohibition.*—A prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.

(4) *Determination of Extent of Upward Departure.*—

(A) *In General.*—Except as provided in subdivision (B), the court shall determine the extent of a departure under this subsection by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's.

(B) *Upward Departures from Category VI.*—In a case in which the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.

(b) *Downward Departures.*—

(1) *Standard for Downward Departure.*—If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

(2) *Prohibitions.*—

(A) *Criminal History Category I.*—A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.

(B) *Armed Career Criminal and Repeat and Dangerous Sex Offender.*—A downward departure under this subsection is prohibited for (i) an armed career criminal within the meaning of § 4B1.4 (Armed Career Criminal); and (ii) a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

(3) *Limitations.*—

(A) *Limitation on Extent of Downward Departure for Career Offender.*—The extent of a downward departure under this subsection for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

(B) *Limitation on Applicability of § 5C1.2 in Event of Downward Departure to Category I.*—A defendant whose criminal history category is Category I after receipt of a downward departure under this subsection does not meet the criterion of subsection (a)(1) of § 5C1.2 (Limitation on Applicability of Statutory Maximum Sentences in Certain Cases) if, before receipt of the downward departure, the defendant had more than one criminal history point under § 4A1.1 (Criminal History Category).

(c) *Written Specification of Basis for Departure.*—In departing from the otherwise applicable criminal history category under this policy statement, the court shall specify in writing the following:

(1) In the case of an upward departure, the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

(2) In the case of a downward departure, the specific reasons why the applicable criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement, the terms 'depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Upward Departures.*—

(A) *Examples.*—An upward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) A previous foreign sentence for a serious offense.

(ii) Receipt of a prior consolidated sentence of ten years for a series of serious assaults.

(iii) A similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding.

(iv) Commission of the instant offense while on bail or pretrial release for another serious offense.

(B) *Upward Departures from Criminal History Category VI.*—In the case of an egregious, serious criminal record in which even the guideline range for Criminal History Category VI is not adequate to reflect the seriousness of the defendant's criminal history, a departure above the guideline range for a defendant with Criminal History Category VI may be warranted. In determining whether an upward departure from Criminal History Category VI is warranted, the court should consider that the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of the defendant's criminal record. For example, a defendant with five prior sentences for very large-scale fraud offenses may have 15 criminal history points, within the range of points typical for Criminal History Category VI, yet have a substantially more serious criminal history overall because of the nature of the prior offenses.

3. *Downward Departures.*—A downward departure from the defendant's criminal history category may be warranted if, for example, the defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(B), due to the fact that the lower limit of the guideline range for Criminal History Category I is set for a first offender with the lowest risk of recidivism.

Background: This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (*e.g.*, defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.''.

The Commentary to § 4A1.1 captioned ''Background'' is amended by striking ''permits information about the significance or similarity of past conduct underlying prior convictions to be used as a basis for imposing a sentence outside the applicable guideline range.'' and inserting ''authorizes the court to depart from the otherwise applicable criminal history category in certain circumstances.''.

Section 5C1.2 is amended in subsection (a)(1) by inserting ''before application of subsection (b) of 4A1.3 (Departures Based on Inadequacy of Criminal History Category)'' after ''guidelines''.

The Commentary to § 5C1.2 captioned ''Application Notes'' is amended in Note 1 by inserting ''before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)'' after ''Category)''.

Part V: Early Disposition Programs

Chapter 5, Part K, is amended by adding at the end the following:

• 3. *Early Disposition Programs*

§ 5K3.1. Early Disposition Programs (Policy Statement)

Upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.

Commentary

Background: This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the PROTECT Act', Pub. L. 10821).''.

Part VI: Plea Agreements

Section 6B1.2 is amended in subsection (a) by striking ''[Rule 11(e)(1)(A)]'' and inserting ''(Rule 11(c)(1)(A))''.

Section 6B1.2 is amended in subsection (b) by striking ''[Rule 11(e)(1)(B)]'' and inserting ''(Rule 11(c)(1)(B))''; and by striking subdivision (2) and inserting the following:

''(2)(A) the recommended sentence departs from the applicable guideline range for justifiable reasons; and (B) those reasons are specifically set forth in writing in the statement of reasons or judgment and commitment order.''.

Section 6B1.2 is amended in subsection (c) by striking ''[Rule 11(e)(1)(C)]'' and inserting ''(Rule 11(c)(1)(C))''; and by striking subdivision (2) and inserting the following:

''(2)(A) the agreed sentence departs from the applicable guideline range for justifiable reasons; and (B) those reasons are specifically set forth in writing in the statement of reasons or judgment and commitment order.''.

The Commentary to 6B1.2 is amended in the second paragraph by striking ''. See generally Chapter 1, Part A, Subpart 4(b)(Departures).'' and inserting ''and those reasons are specifically set forth in writing in the statement of reasons or the judgment and commitment order. As set forth in subsection (d) of 5K2.0 (Grounds for Departure), however, the court may not depart below the applicable guideline range merely because of the defendant's decision to plead guilty to the offense or to enter a plea agreement with respect to the offense.''.

The heading of Chapter One is amended to read as follow:

Chapter One—Authority and General Application Principles''.

Chapter One, Part A, is amended to read as follows:

Part A—Authority

1A1.1. Authority

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) Section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.

Commentary

Application Note:

1. Historical Review of Original Introduction.—Part A of Chapter One originally was an introduction to the Guidelines Manual that explained a number of policy decisions made by the Commission when it promulgated the initial set of guidelines. This introduction was amended occasionally between 1987 and 2003. In 2003, as part of the Commission's implementation of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the 'PROTECT Act', Pub. L. 108–21), the original introduction was transferred to the Historical Note at the end of this guideline. The Commission encourages the review of this material for context and historical purposes.

Background: The Sentencing Reform Act of 1984 changed the course of federal sentencing. Among other things, the Act created the United States Sentencing Commission as an independent agency in the Judicial Branch, and directed it to develop guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes. Moreover, it empowered the Commission with ongoing responsibilities to monitor the guidelines, submit to Congress appropriate modifications of the guidelines and recommended changes in criminal statutes, and establish education and research programs. The mandate rested on Congressional awareness that sentencing was a dynamic field that requires continuing review by an expert body to revise sentencing policies, in light of application experience, as new criminal statutes are enacted, and as more is learned about what motivates and controls criminal behavior.

Historical Note: Chapter One, Part A, as in effect on November 1, 1987, read as follows:

Chapter One—Introduction and General Application Principles

Part A—Introduction

1. Authority

The United States Sentencing Commission ('Commission') is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

2. The Statutory Mission

The Comprehensive Crime Control Act of 1984 foresees guidelines that will further the basic purposes of criminal punishment, *i.e.*, deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender. It delegates to the Commission broad authority to review and rationalize the federal sentencing process.

The statute contains many detailed instructions as to how this determination should be made, but the most important of them instructs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/ $2500 taken.' An offender characteristic category might be 'offender with one prior conviction who was not sentenced to imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons, to be determined by coordinating the offense behavior categories with the offender characteristic categories. The statute contemplates the guidelines will establish a range of sentences for every coordination of categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum imprisonment cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

The sentencing judge must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the judge to depart from the guidelines and sentence outside the range. In that case, the judge must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to see if the guideline was correctly applied. If the judge departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act requires the offender to serve virtually all of any prison sentence imposed, for it abolishes parole and substantially restructures good behavior adjustments.

The law requires the Commission to send its initial guidelines to Congress by April 13, 1987, and under the present statute they take effect automatically on November 1, 1987. Public Law No. 98–473, 235, reprinted at 18 U.S.C. 3551. The Commission may submit guideline

amendments each year to Congress between the beginning of a regular session and May 1. The amendments will take effect automatically 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The Commission, with the aid of its legal and research staff, considerable public testimony, and written commentary, has developed an initial set of guidelines which it now transmits to Congress. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines by submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts throughout the nation.

3. The Basic Approach (Policy Statement)

To understand these guidelines and the rationale that underlies them, one must begin with the three objectives that Congress, in enacting the new sentencing law, sought to achieve. Its basic objective was to enhance the ability of the criminal justice system to reduce crime through an effective, fair sentencing system. To achieve this objective, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arises out of the present sentencing system which requires a judge to impose an indeterminate sentence that is automatically reduced in most cases by 'good time' credits. In addition, the parole commission is permitted to determine how much of the remainder of any prison sentence an offender actually will serve. This usually results in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence handed down by the court.

Second, Congress sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.

Honesty is easy to achieve: The abolition of parole makes the sentence imposed by the court the sentence the offender will serve. There is a tension, however, between the mandate of uniformity (treat similar cases alike) and the mandate of proportionality (treat different cases differently) which, like the historical tension between law and equity, makes it difficult to achieve both goals simultaneously. Perfect uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that lumps together armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, is far too broad.

At the same time, a sentencing system tailored to fit every conceivable wrinkle of each case can become unworkable and seriously compromise the certainty of punishment and its deterrent effect. A bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, a teller or a customer, at night (or at noon), for a bad (or arguably less bad) motive, in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time that day, while sober (or under the influence of drugs or alcohol), and so forth.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected (and therefore may already be counted, to a different degree, in the punishment for the underlying offense); and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies, depending on how much other harm has occurred. (Thus, one cannot easily assign points for each kind of harm and simply add them up, irrespective of context and total amounts.)

The larger the number of subcategories, the greater the complexity that is created and the less workable the system. Moreover, the subcategories themselves, sometimes too broad and sometimes too narrow, will apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system of subcategories, would have to make a host of decisions about whether the underlying facts are sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different judges will apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to eliminate.

In view of the arguments, it is tempting to retreat to the simple, broad-category approach and to grant judges the discretion to select the proper point along a broad sentencing range. Obviously, however, granting such broad discretion risks correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. That is to say, such an approach risks a return to the wide disparity that Congress established the Commission to limit.

In the end, there is no completely satisfying solution to this practical stalemate. The Commission has had to simply balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any ultimate system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the moral principle of 'just deserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Thus, if a defendant is less culpable, the defendant deserves less punishment. Others argue that punishment should be imposed primarily on the basis of practical 'crime

control' considerations. Defendants sentenced under this scheme should receive the punishment that most effectively lessens the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of these points of view have urged the Commission to choose between them, to accord one primacy over the other. Such a choice would be profoundly difficult. The relevant literature is vast, the arguments deep, and each point of view has much to be said in its favor. A clear-cut Commission decision in favor of one of these approaches would diminish the chance that the guidelines would find the widespread acceptance they need for effective implementation. As a practical matter, in most sentencing decisions both philosophies may prove consistent with the same result.

For now, the Commission has sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that uses data estimating the existing sentencing system as a starting point. It has analyzed data drawn from 10,000 presentence investigations, crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and resulting statistics, and data from other relevant sources, in order to determine which distinctions are important in present practice. After examination, the Commission has accepted, modified, or rationalized the more important of these distinctions.

This empirical approach has helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, is short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit many distinctions that some may believe important, yet they include most of the major distinctions that statutes and presentence data suggest make a significant difference in sentencing decisions. Important distinctions that are ignored in existing practice probably occur rarely. A sentencing judge may take this unusual case into account by departing from the guidelines.

The Commission's empirical approach has also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of moral consensus might make it difficult to say exactly what punishment is deserved for a particular crime, specified in minute detail. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient, readily available data might make it difficult to say exactly what punishment will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a moral or crime-control perspective.

The Commission has not simply copied estimates of existing practice as revealed by the data (even though establishing offense values on this basis would help eliminate disparity, for the data represent averages). Rather, it has departed from the data at different points for various important reasons. Congressional statutes, for example, may suggest or require departure, as in the case of the new drug law that imposes increased and mandatory minimum sentences. In addition, the data may reveal inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from present practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these initial guidelines are but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission has developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, and therefore effective, sentencing system.

4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-writing process has required the Commission to resolve a host of important policy questions, typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction will briefly discuss several of those issues. Commentary in the guidelines explains others.

(a) *Real Offense vs. Charge Offense Sentencing.*

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense with which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a real offense system. After all, the present sentencing system is, in a sense, a real offense system. The sentencing court (and the parole commission) take account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process, given the potential existence of hosts of adjudicated real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable, and, in the Commission's view, risked return to wide disparity in practice.

The Commission therefore abandoned the effort to devise a 'pure' real offense system and instead experimented with a 'modified real offense system,' which it published for public comment in a September 1986 preliminary draft.

This version also foundered in several major respects on the rock of practicality. It was highly complex and its mechanical rules for adding harms (*e.g.*, bodily injury added the same punishment irrespective of context) threatened to work considerable unfairness. Ultimately, the Commission decided that it could not find a practical or fair and efficient way to implement either a pure or modified real offense system of the sort it originally wanted, and it abandoned that approach.

The Commission, in its January 1987 Revised Draft and the present guidelines, has moved closer to a 'charge offense' system. The system is not, however, pure; it has a number of real elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law have forced the Commission to write guidelines that are descriptive of generic conduct rather than tracking purely statutory language. For another, the guidelines, both through specific offense characteristics and adjustments, take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken.

Finally, it is important not to overstate the difference in practice between a real and a charge offense system. The federal criminal system, in practice, deals mostly with drug offenses, bank robberies and white collar crimes (such as fraud, embezzlement, and bribery). For the most part, the conduct that an indictment charges approximates the real and relevant conduct in which the offender actually engaged.

The Commission recognizes its system will not completely cure the problems of a real offense system. It may still be necessary, for example, for a court to determine some particular real facts that will make a difference to the sentence. Yet, the Commission believes that the instances of controversial facts will be far fewer; indeed, there will be few enough so that the court system will be able to devise fair procedures for their determination. *See United States* v. *Fatico,* 579 F.2d 707 (2d Cir. 1978) (permitting introduction of hearsay evidence at sentencing hearing under certain conditions), on remand, 458 F. Supp. 388 (E.D.N.Y. 1978), aff'd, 603 F.2d 1053 (2d Cir. 1979) (holding that the government need not prove facts at sentencing hearing beyond a reasonable doubt), cert. denied, 444 U.S. 1073 (1980).

The Commission also recognizes that a charge offense system has drawbacks of its own. One of the most important is its potential to turn over to the prosecutor the power to determine the sentence by increasing or decreasing the number (or content) of the counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin, or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Further, a sentencing court may control any inappropriate manipulation of the indictment through use of its power to depart from the specific guideline sentence. Finally, the Commission will closely monitor problems arising out of count manipulation and will make appropriate adjustments should they become necessary.

(b) *Departures.*

The new sentencing statute permits a court to depart from a guideline-specified sentence only when it finds 'an aggravating or mitigating circumstance * * * that was not adequately taken into consideration by the Sentencing Commission * * *'. 18 U.S.C. 3553(b). Thus, in principle, the Commission, by specifying that it had adequately considered a particular factor, could prevent a court from using it as grounds for departure. In this initial set of guidelines, however, the Commission does not so limit the courts' departure powers. The Commission intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, Socio-Economic Status), the third sentence of 5H1.4, and the last sentence of § 5K2.12, list a few factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors (whether or not mentioned anywhere else in the guidelines) that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two basic reasons. First is the difficulty of foreseeing and capturing a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that in the initial set of guidelines it need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, the Commission, over time, will be able to create more accurate guidelines that specify precisely where departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's sentencing data indicate make a significant difference in sentencing at the present time. Thus, for example, where the presence of actual physical injury currently makes an important difference in final sentences, as in the case of robbery, assault, or arson, the guidelines specifically instruct the judge to use this factor to augment the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data do not permit the Commission, at this time, to conclude that the factor is empirically important in relation to the particular offense. Of course, a factor (say physical injury) may nonetheless sometimes occur in connection with a crime (such as fraud) where it does not often occur. If, however, as the data indicate, such occurrences are rare, they are precisely the type of events that the court's departure powers were designed to cover — unusual cases outside the range of the more typical offenses for which the guidelines were designed. Of course, the Commission recognizes that even its collection and analysis of 10,000 presentence reports are an imperfect source of data sentencing estimates. Rather than rely heavily at this time upon impressionistic accounts, however, the Commission believes it wiser to wait and collect additional data from our continuing monitoring process that may demonstrate how the guidelines work in practice before further modification.

It is important to note that the guidelines refer to three different kinds of departure. The first kind, which will

most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the serious' or the 'simple' category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a 'departure' in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though others have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for 'reasonableness' on appeal. The Commission believes, however, that a simple reference by the court to the 'mid-category' nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure.

The second kind involves instances in which the guidelines provide specific guidance for departure, by analogy or by other numerical or non-numerical suggestions. For example, the commentary to § 2G1.1 (Transportation for Prostitution), recommends a downward adjustment of eight levels where commercial purpose was not involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions, and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A third kind of departure will remain unguided. It may rest upon grounds referred to in Chapter 5, Part H, or on grounds not mentioned in the guidelines. While Chapter 5, Part H lists factors that the Commission believes may constitute grounds for departure, those suggested grounds are not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly unusual.

(c) *Plea Agreements.*

Nearly ninety percent of all federal criminal cases involve guilty pleas, and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts have urged the Commission not to attempt any major reforms of the agreement process, on the grounds that any set of guidelines that threatens to radically change present practice also threatens to make the federal system unmanageable. Others, starting with the same facts, have argued that guidelines which fail to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines may bring. Still other commentators make both sets of arguments.

The Commission has decided that these initial guidelines will not, in general, make significant changes in current plea agreement practices. The court will accept or reject any such agreements primarily in accordance with the rules set forth in Fed.R.Crim.P. 11(e). The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate.

The Commission nonetheless expects the initial set of guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. Insofar as a prosecutor and defense attorney seek to agree about a likely sentence or range of sentences, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which judges will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation. Since they will have before them the norm, the relevant factors (as disclosed in the plea agreement), and the reason for the agreement, they will find it easier than at present to determine whether there is sufficient reason to accept a plea agreement that departs from the norm.

(d) Probation and Split Sentences.

The statute provides that the guidelines are to 'reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense * * * 28 U.S.C. 994(j). Under present sentencing practice, courts sentence to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.' If the guidelines were to permit courts to impose probation instead of prison in many or all such cases, the present sentences would continue to be ineffective.

The Commission's solution to this problem has been to write guidelines that classify as 'serious' (and therefore subject to mandatory prison sentences) many offenses for which probation is now frequently given. At the same time, the guidelines will permit the sentencing court to impose short prison terms in many such cases. The Commission's view is that the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement or intermittent confinement). For offense levels eleven and twelve, the court must impose at least one half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

(e) *Multi-Count Convictions.*

The Commission, like other sentencing commissions, has found it particularly difficult to develop rules for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The reason it is difficult is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the

simplest offenses, for reasons that are often fortuitous, would lead to life sentences of imprisonment—sentences that neither 'just deserts' nor 'crime control' theories of punishment would find justified.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment when multiple offenses that are the subjects of separate counts take place.

These rules are set out in Chapter Three, Part D. They essentially provide: (1) When the conduct involves fungible items, *e.g.*, separate drug transactions or thefts of money, the amounts are added and the guidelines apply to the total amount. (2) When nonfungible harms are involved, the offense level for the most serious count is increased (according to a somewhat diminishing scale) to reflect the existence of other counts of conviction.

The rules have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures where necessary to produce a mitigated sentence.

(f) *Regulatory Offenses.*

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These criminal statutes pose two problems. First, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it cannot comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission has sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses are particularly important in light of the need for enforcement of the general regulatory scheme. The Commission has sought to treat these offenses in these initial guidelines. It will address the less common regulatory offenses in the future.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses, dividing them into four categories.

First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper treatment of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense is as follows:

(1) The guideline provides a low base offense level (6) aimed at the first type of recordkeeping or reporting offense. It gives the court the legal authority to impose a punishment ranging from probation up to six months of imprisonment.

(2) Specific offense characteristics designed to reflect substantive offenses that do occur (in respect to some regulatory offenses), or that are likely to occur, increase the offense level.

(3) A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will be treated like the substantive offense.

The Commission views this structure as an initial effort. It may revise its approach in light of further experience and analysis of regulatory crimes.

(g) *Sentencing Ranges.*

In determining the appropriate sentencing ranges for each offense, the Commission began by estimating the average sentences now being served within each category. It also examined the sentence specified in congressional statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's forthcoming detailed report will contain a comparison between estimates of existing sentencing practices and sentences under the guidelines.

While the Commission has not considered itself bound by existing sentencing practice, it has not tried to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences in many instances will approximate existing practice, but adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons now receive probation, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who now receive probation from those who receive more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a current sentencing practice of very wide variability in which some defendants receive probation while others receive several years in prison for the same offense. Moreover, inasmuch as those who currently plead guilty often receive lesser sentences, the guidelines also permit the court to impose lesser sentences on those defendants who accept responsibility and those who cooperate with the government.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the new drug law and the career offender provisions of the sentencing law, require the Commission to promulgate rules that will lead to substantial prison population increases. These increases will occur irrespective of any guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum, or career offender, sentences), will lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons, estimate at approximately 10 percent, over a period of ten years.

(h) *The Sentencing Table.*

The Commission has established a sentencing table. For technical and practical reasons it has 43 levels. Each row in the table contains levels that overlap with the levels in the preceding and succeeding rows. By overlapping the levels, the table should discourage unnecessary litigation. Both prosecutor and defendant will realize that the difference between one level and another will not necessarily make a difference in the sentence that the judge imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether

$10,000 or $11,000 was obtained as a result of a fraud. At the same time, the rows work to increase a sentence proportionately. A change of 6 levels roughly doubles the sentence irrespective of the level at which one starts. The Commission, aware of the legal requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months, also wishes to permit courts the greatest possible range for exercising discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the judge within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many, rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation as to which category an offender fell within would become more likely. Where a table has many smaller monetary distinctions, it minimizes the likelihood of litigation, for the importance of the precise amount of money involved is considerably less.

5. A Concluding Note

The Commission emphasizes that its approach in this initial set of guidelines is one of caution. It has examined the many hundreds of criminal statutes in the United States Code. It has begun with those that are the basis for a significant number of prosecutions. It has sought to place them in a rational order. It has developed additional distinctions relevant to the application of these provisions, and it has applied sentencing ranges to each resulting category. In doing so, it has relied upon estimates of existing sentencing practices as revealed by its own statistical analyses, based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from existing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with these guidelines will lead to additional information and provide a firm empirical basis for revision.

Finally, the guidelines will apply to approximately 90 percent of all cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in this initial set of guidelines. They will, however, be addressed in the near future. Their exclusion from this initial submission does not reflect any judgment about their seriousness. The Commission has also deferred promulgation of guidelines pertaining to fines, probation and other sanctions for organizational defendants, with the exception of antitrust violations. The Commission also expects to address this area in the near future.'.

Amendments

1989 Amendments

Amendment 67 amended Subpart 4(b) in the first sentence of the first paragraph by striking '* * * that was' and inserting 'of a kind, or to a degree,'; in the second sentence of the last paragraph by striking 'Part H' and inserting 'Part K (Departures)'; and in the third sentence of the last paragraph by striking 'Part H' and inserting 'Part K'.

Amendment 68 amended Subpart 4(b) in the first sentence of the fourth paragraph by striking 'three' and inserting 'two'; in the fourth paragraph by striking the second through eighth sentences as follows:

'The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the 'serious' or the 'simple' category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a 'departure' in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though other have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for 'reasonableness' on appeal. The Commission believes, however, that a simple reference by the court to the 'mid-category' nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure.';

in the first sentence of the fifth paragraph by striking 'second' and inserting 'first'; and in the first sentence of the sixth paragraph by striking 'third' and inserting 'second'.

1990 Amendment

Amendment 307 amended Subparts 2 through 5 to read as follows:

2. The Statutory Mission

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation. The Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/$2500 taken.' An offender characteristic category might be 'offender with one prior conviction not resulting in imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: The maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1987, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular

Congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

3. The Basic Approach (Policy Statement)

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

Honesty is easy to achieve: The abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: a bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover, complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the simple, broad category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of 'just desserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical 'crime control' considerations. This theory calls for sentences that most effectively lessen the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions

the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions. Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just desserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just desserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, proportional, and therefore effective sentencing system.

4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-drafting process required the Commission to resolve a host of important policy questions typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction briefly discusses several of those issues; commentary in the guidelines explains others.

(a) *Real Offense vs. Charge Offense Sentencing.*

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense for which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during his escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a pure real offense system. After all, the pre-guidelines sentencing system was, in a sense, this type of system. The sentencing court and the parole commission took account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive, mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process given the potential existence of hosts of adjudicated 'real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable. In the Commission's view, such a system risked return to wide disparity in sentencing practice.

In its initial set of guidelines submitted to Congress in April 1987, the Commission moved closer to a charge offense system. This system, however, does contain a significant number of real offense elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law forced the Commission to write guidelines that are descriptive of generic conduct rather than guidelines that track purely statutory language. For another, the guidelines take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken, through alternative base offense levels, specific offense characteristics, cross references, and adjustments.

The Commission recognized that a charge offense system has drawbacks of its own. One of the most important is the potential it affords prosecutors to

influence sentences by increasing or decreasing the number of counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Furthermore, a sentencing court may control any inappropriate manipulation of the indictment through use of its departure power. Finally, the Commission will closely monitor charging and plea agreement practices and will make appropriate adjustments should they become necessary.

(b) *Departures.*

The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds 'an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' 18 U.S.C. 3553(b). The Commission intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), the third sentence of § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse), and the last sentence of § 5K2.12 (Coercion and Duress) list several factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two reasons. First, it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that the initial set of guidelines need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so and court decisions with references thereto, the Commission, over time, will be able to refine the guidelines to specify more precisely when departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's data indicate made a significant difference in pre-guidelines sentencing practice. Thus, for example, where the presence of physical injury made an important difference in pre-guidelines sentencing practice (as in the case of robbery or assault), the guidelines specifically include this factor to enhance the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data did not permit the Commission to conclude that the factor was empirically important in relation to the particular offense. Of course, an important factor (*e.g.*, physical injury) may infrequently occur in connection with a particular crime (*e.g.*, fraud). Such rare occurrences are precisely the type of events that the courts' departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed.

It is important to note that the guidelines refer to two different kinds of departure. The first involves instances in which the guidelines provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions. For example, the Commentary to § 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) recommends a downward departure of eight levels where a commercial purpose was not involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A second type of departure will remain unguided. It may rest upon grounds referred to in Chapter Five, Part K (Departures) or on grounds not mentioned in the guidelines. While Chapter Five, Part K lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly infrequent.

(c) *Plea Agreements.*

Nearly ninety percent of all federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts urged the Commission not to attempt any major reforms of the plea agreement process on the grounds that any set of guidelines that threatened to change pre-guidelines practice radically also threatened to make the federal system unmanageable. Others argued that guidelines that failed to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines would bring.

The Commission decided not to make major changes in plea agreement practices in the initial guidelines, but rather to provide guidance by issuing general policy statements concerning the acceptance of plea agreements in Chapter Six, Part B (Plea Agreements). The rules set forth in Fed. R. Crim. P. 11(e) govern the acceptance or rejection of such agreements. The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements and whether plea agreement practices are undermining the intent of the Sentencing Reform Act. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate. Importantly, if the policy statements relating to plea agreements are followed, circumvention of the Sentencing Reform Act and the guidelines should not occur.

The Commission expects the guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. In the event a prosecutor and defense attorney explore the possibility of a negotiated plea, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which courts will likely refer when they decide

whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation.

(d) *Probation and Split Sentences.*

The statute provides that the guidelines are to reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense * * *.' 28 U.S.C. 994(j). Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.'

The Commission's solution to this problem has been to write guidelines that classify as serious many offenses for which probation previously was frequently given and provide for at least a short period of imprisonment in such cases. The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent, particularly when compared with pre-guidelines practice where probation, not prison, was the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent confinement, or home detention). For offense levels eleven and twelve, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

(e) *Multi-Count Convictions.*

The Commission, like several state sentencing commissions, has found it particularly difficult to develop guidelines for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The difficulty is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to sentences of life imprisonment—sentences that neither just deserts nor crime control theories of punishment would justify.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment for multiple offenses that are the subjects of separate counts.

These rules are set out in Chapter Three, Part D (Multiple Counts). They essentially provide: (1) When the conduct involves fungible items (*e.g.,* separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount; (2) when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction. The guidelines have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures.

(f) *Regulatory Offenses.*

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These statutes pose two problems: first, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it could not comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses were particularly important in light of the need for enforcement of the general regulatory scheme. The Commission addressed these offenses in the initial guidelines.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses that divides them into four categories. First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper handling of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense provides a low base offense level (*e.g.,* 6) aimed at the first type of recordkeeping or reporting offense. Specific offense characteristics designed to reflect substantive harms that do occur in respect to some regulatory offenses, or that are likely to occur, increase the offense level. A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will have the same offense level as the substantive offense.

(g) *Sentencing Ranges.*

In determining the appropriate sentencing ranges for each offense, the Commission estimated the average sentences served within each category under the pre-guidelines sentencing system. It also examined the sentences specified in federal statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's Supplementary Report on the Initial Sentencing Guidelines (1987) contains a comparison between estimates of pre-guidelines sentencing practice and sentences under the guidelines.

While the Commission has not considered itself bound by pre-

guidelines sentencing practice, it has not attempted to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences, in many instances, will approximate average pre-guidelines practice and adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons received probation under pre-guidelines practice, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who received probation from those who received more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a pre-guidelines sentencing practice of very wide variability in which some defendants received probation while others received several years in prison for the same offense. Moreover, inasmuch as those who pleaded guilty under pre-guidelines practice often received lesser sentences, the guidelines permit the court to impose lesser sentences on those defendants who accept responsibility for their misconduct. For defendants who provide substantial assistance to the government in the investigation or prosecution of others, a downward departure may be warranted.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the Anti-Drug Abuse Act of 1986 and the career offender provisions of the Sentencing Reform Act of 1984 (28 U.S.C. 994(h)), required the Commission to promulgate guidelines that will lead to substantial prison population increases. These increases will occur irrespective of the guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum or career offender sentences), are projected to lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons in 1987, estimated at approximately 10 percent over a period of ten years.

(h) *The Sentencing Table.*

The Commission has established a sentencing table that for technical and practical reasons contains 43 levels. Each level in the table prescribes ranges that overlap with the ranges in the preceding and succeeding levels. By overlapping the ranges, the table should discourage unnecessary litigation. Both prosecution and defense will realize that the difference between one level and another will not necessarily make a difference in the sentence that the court imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether $10,000 or $11,000 was obtained as a result of a fraud. At the same time, the levels work to increase a sentence proportionately. A change of six levels roughly doubles the sentence irrespective of the level at which one starts. The guidelines, in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months (28 U.S.C. 994(b)(2)), permit courts to exercise the greatest permissible range of sentencing discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the court within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation over which category an offender fell within would become more likely. Where a table has many small monetary distinctions, it minimizes the likelihood of litigation because the precise amount of money involved is of considerably less importance.

5. A Concluding Note

The Commission emphasizes that it drafted the initial guidelines with considerable caution. It examined the many hundreds of criminal statutes in the United States Code. It began with those that were the basis for a significant number of prosecutions and sought to place them in a rational order. It developed additional distinctions relevant to the application of these provisions and it applied sentencing ranges to each resulting category. In doing so, it relied upon pre-guidelines sentencing practice as revealed by its own statistical analyses based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines, and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from pre-guidelines sentencing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with the guidelines will lead to additional information and provide a firm empirical basis for consideration of revisions.

Finally, the guidelines will apply to more than 90 percent of all felony and Class A misdemeanor cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in the guidelines. Their exclusion does not reflect any judgment regarding their seriousness and they will be addressed as the Commission refines the guidelines over time. '.

1992 Amendment

Amendment 466 amended Subpart 4(b) in the first paragraph by inserting '§ 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances)' after '§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status)'.

1995 Amendment

Amendment 534 amended Subpart 4(d) in the second sentence of the third paragraph by striking 'six' and inserting 'eight'; and in the third sentence of the third paragraph by striking ''seven through'' and inserting ''nine and''.

1996 Amendment

Amendment 538 amended Subpart 4(b) in the fourth paragraph by striking the third sentence as follows:

'§ For example, the Commentary to '§ 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) recommends a downward departure of eight levels where a commercial purpose was not involved.'.

2000 Amendments

Amendment 602 amended Subpart 4(b) in the fifth sentence of the first paragraph by striking 'and' before 'the last'; and by inserting, and '§ 5K2.19 (Post-Sentencing Rehabilitative Efforts)' after '(Coercion and Duress)'.

Amendment 603 amended Subpart 4(d) by adding an asterisk at the end of the last paragraph after the period; and by adding at the end the following footnote:

* **Note:** Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See Supplement to Appendix C, Amendment 603.)'.''.

Part VIII: Miscellaneous Amendments

The Commentary to 1B1.1 captioned ''Application Notes'' is amended by striking Note 1 in its entirety and inserting the following:

''1. The following are definitions of terms that are used frequently in the guidelines and are of general applicability (except to the extent expressly modified in respect to a particular guideline or policy statement):

(A) 'Abducted' means that a victim was forced to accompany an offender to a different location. For example, a bank robber's forcing a bank teller from the bank into a getaway car would constitute an abduction.

(B) 'Bodily injury' means any significant injury; *e.g.,* an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought.

(C) 'Brandished' with reference to a dangerous weapon (including a firearm) means that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person. Accordingly, although the dangerous weapon does not have to be directly visible, the weapon must be present.

(D) 'Dangerous weapon' means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) the defendant used the object in a manner that created the impression that the object was such an instrument (*e.g.* a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).

(E) 'Departure' means (i) for purposes other than those specified in subdivision (ii), imposition of a sentence outside the applicable guideline range or of a sentence that is otherwise different from the guideline sentence; and (iii) for purposes of 4A1.3 (Departures Based on Inadequacy of Criminal History Category), assignment of a criminal history category other than the otherwise applicable criminal history category, in order to effect a sentence outside the applicable guideline range. 'Depart' means grant a departure.

'Downward departure' means departure that effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence. 'Depart downward' means grant a downward departure.

'Upward departure' means departure that effects a sentence greater than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise greater than the guideline sentence. 'Depart upward' means grant an upward departure.

(F) 'Destructive device' means any article described in 26 U.S.C. 5845(f) (including an explosive, incendiary, or poison gas—(i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses).

(G) 'Firearm' means (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device. A weapon, commonly known as a 'BB' or pellet gun, that uses air or carbon dioxide pressure to expel a projectile is a dangerous weapon but not a firearm.

(H) 'Offense' means the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context. The term 'instant' is used in connection with 'offense,' 'federal offense,' or 'offense of conviction,' as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an offense before another court (*e.g.,* an offense before a state court involving the same underlying conduct).

(I) 'Otherwise used' with reference to a dangerous weapon (including a firearm) means that the conduct did not amount to the discharge of a firearm but was more than brandishing, displaying, or possessing a firearm or other dangerous weapon.

(J) 'Permanent or life-threatening bodily injury' means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. In the case of a kidnapping, for example, maltreatment to a life-threatening degree (*e.g.,* by denial of food or medical care) would constitute life-threatening bodily injury.

(K) 'Physically restrained' means the forcible restraint of the victim such as by being tied, bound, or locked up.

(L) 'Serious bodily injury' means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In addition, 'serious bodily injury' is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law.''.

Section 2A4.1(a) is amended to read as follows:

''(a) *Base Offense Level: 32*''.

Section 2A4.1(b)(4) is amended by striking subdivision (C) in its entirety.

Section 2A4.1(b)(5) is amended to read as follows:

''(5) If the victim was sexually exploited, increase by 6 levels.''.

The Commentary to 2A4.1 captioned ''Application Notes'' is amended by striking Note 3 in its entirety; and by redesignating Notes 4 and 5 and Notes 3 and 4, respectively.

Reason for Amendment: This emergency amendment continues the Commission's work in the area of departures and implements the directive in section 401(m) of the ''Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003'' or ''PROTECT Act,'' Public Law 108–21. The PROTECT Act was enacted on April 30, 2003, and directs the Commission, not later than 180 days after the enactment of the Act, to promulgate: (1) Appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced; (2) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney for the district in which the court resides ; (3) any other necessary conforming amendments, including a revision of paragraph 4(b) of Part A of Chapter One and a revision of § 5K2.0 (Grounds for Departure). The analysis underlying this amendment will be set forth more fully in a forthcoming report to Congress.

The Commission anticipates that this amendment will substantially reduce the incidence of downward departures by prohibiting several factors as grounds for departure, restricting the availability of certain departures, clarifying when certain departures are appropriate, and limiting the extent of departure permissible for certain offenders. The

amendment also reduces the incidence of downward departures generally by restructuring departure provisions throughout the Guidelines Manual to track more closely both the statutory criteria for imposing a sentence outside the guideline sentencing range and the newly enacted statutory requirement that reasons for departure be stated with specificity in the written order of judgment and commitment. *See* 18 U.S.C. 3553 (Imposition of a sentence), 3742(e) (Review of a sentence). The Commission determined that requiring sentencing courts to document reasons for departure with greater specificity complements the findings required of sentencing courts by the PROTECT Act, increases the accountability of sentencing courts for departures by facilitating appellate review, and improves the Commission's ability to monitor departure decisions and refine the guidelines as necessary.

The eight-part amendment makes modifications to § 5K2.0 (Grounds for Departure), § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), § 5H1.6 (Family Ties and Responsibilities), § 5H1.7 (Role in the Offense), 5H1.8 (Criminal History), § 5K2.10 (Victim's Conduct), § 5K2.12 (Coercion and Duress), § 5K2.13 (Diminished Capacity), § 5K2.20 (Aberrant Behavior), § 4A1.3 (Departures Based on Inadequacy of Criminal History Category), and § 6B1.2 (Standards for Acceptance of Plea Agreements). The amendment also creates one new policy statement, § 5K3.1 (Early Disposition Programs), and one new guideline, § 1A1.1 (Authority), among other changes.

Part I of the amendment makes several significant modifications to § 5K2.0 (Grounds for Departure) to limit, and in certain circumstances, to prohibit downward departures. The amendment generally restructures § 5K2.0 to set forth more clearly the standards governing departures in order to facilitate and emphasize the analysis required of the court. The amendment does so by: (1) Integrating throughout the policy statement the statutory language of 18 U.S.C. 3553(b) and 3742(e), as amended by the PROTECT Act, which provide the statutory criteria for sentencing outside the guideline range; (2) adopting, when provided in the policy statement, a uniform qualitative description of the type of case in which a departure may be warranted, the ''exceptional case''; (3) restating in the application notes and background commentary to § 5K2.0 longstanding commentary in the Guidelines Manual, which was reaffirmed by the PROTECT Act, that the frequency of departures under § 5K2.0 generally should be rare, and that certain types of departures under § 5K2.0 should be extremely rare; and (4) deleting certain language in the commentary taken from *Koon* v. *United States,* 518 U.S. 81 (1996) that effectively was overruled by the PROTECT Act.

Accordingly, § 5K2.0(a) sets forth the general governing principle that, in cases other than child crimes and sexual offenses, the sentencing court may depart if the court finds pursuant to 18 U.S.C. 3553(b)(1) that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission that, in order to advance the objectives set forth in 18 U.S.C. 3553(a)(2), should result in a sentence different from a sentence within the applicable guideline range.

The amendment also prohibits several grounds for departure, in addition to the departure prohibitions in § 5K2.0 for child crimes and sexual offenses enacted by the PROTECT Act, and other prohibitions elsewhere in the Guidelines Manual. The amendment creates a new subsection, § 5K2.0(d), that clearly lists the forbidden departure grounds. These include several longstanding prohibitions, as well as a number of new prohibitions added by the amendment, specifically: (1) The defendant's acceptance of responsibility; (2) the defendant's aggravating or mitigating role in the offense; (3) the defendant's decision, in itself, to plead guilty to the offense or to enter into a plea agreement with respect to the offense; and (4) the defendant's fulfillment of restitution only to the extent required by law, including the guidelines. The Commission determined that these circumstances are never appropriate grounds for departure.

The amendment also revises § 5K2.0 to restrict the availability of departures based on multiple circumstances, often referred to as a ''combination of factors.'' The Commission determined that heightened criteria are appropriate for cases in which no single offender characteristic or other circumstance independently is sufficient to provide a basis for departure. Under § 5K2.0(c) a departure based on multiple circumstances can be based only on offender characteristics or other circumstances that are identified in the guidelines as permissible grounds for departure. Circumstances unmentioned in the guidelines, therefore, can no longer be used for a departure based on multiple circumstances pursuant to § 5K2.0(c). In addition, in order to support a departure based on a combination of circumstances, each offender characteristic or other circumstance must be present individually to a substantial degree and must make the case exceptional when considered together. Emphasizing the Commission's expectation as to the infrequency of such departures, the accompanying application note retains previously existing guidance and states that departures under § 5K2.0(c) based on a combination of not ordinarily relevant circumstances should occur extremely rarely.

In addition, the amendment clarifies when a departure may be based on a circumstance present to a degree not adequately taken into consideration. Section 5K2.0(a)(3) provides that a departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration, only if the court determines that such circumstance is present to a degree substantially different from that ordinarily involved in that kind of offense.

The amendment also modifies § 5K2.0 in two additional ways to underscore the need for courts to state with specificity their reasons for departure. First, § 5K2.0(e) provides that if the court departs, it shall state, pursuant to 18 U.S.C. 3553(c), as amended by the PROTECT Act, its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received *in camera,* shall state those factors with specificity in the written judgment and commitment order. Second, Application Note 5 provides that in cases in which the court departs based on reasons set forth in a plea agreement, the court must state the reasons for departure with specificity in the written judgment and commitment order.

Part II of the amendment limits several departure provisions in Chapter Five, Part H (Specific Offender Characteristics). First, the amendment adds a prohibition to § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction) against departures based on addiction to gambling and renames the policy statement accordingly. The Commission determined that addiction to gambling is never a relevant ground for departure.

Second, the amendment limits the availability of departures pursuant to § 5H1.6 (Family Ties and Responsibilities) by requiring the court to conduct certain more rigorous analyses. In determining whether a departure is warranted under this policy

statement, a new application note instructs the court to consider the seriousness of the offense; the involvement in the offense, if any, of members of the defendant's family; and the danger, if any to members of the defendant's immediate family as a result of the offense.

In addition to considering those factors, the amendment further restricts family ties departures by adding an application note that establishes heightened criteria for departures based on loss of caretaking or financial support. In such cases, the court must find all of the following four circumstances: (1) That a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking or essential financial support to the defendant's family; (2) that such loss exceeds the harm ordinarily incident to incarceration; (3) that there are no effective remedial or ameliorative programs reasonably available, making the defendant's caretaking or financial support irreplaceable to the defendant's family; and (4) that the departure effectively will address the loss of caretaking or financial support. The Commission determined that these heightened criteria are appropriate and necessary in order to distinguish hardship or suffering that is ordinarily incident to incarceration from that which is exceptional.

The amendment also eliminates community ties as a separate ground for departure and renames § 5H1.6 accordingly.

Third, the amendment makes conforming modifications to § 5H1.7 (Role in the Offense), reiterating that a defendant's role in the offense is not a basis for departure, and to § 5H1.8 (Criminal History), providing that the only grounds for departure based on the defendant's criminal history are set forth in § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

Part III of the amendment limits several departure provisions in Chapter Five, Part K (Departures). First, the amendment adds a factor to § 5K2.10 (Victim's Conduct) that the court should consider when determining whether a departure is warranted based on victim's conduct. The amendment provides that, in addition to five previously existing factors, the court should consider the proportionality and reasonableness of the defendant's response to the victim's provocation.

Second, the amendment adds a similar factor to § 5K2.12 (Coercion and Duress). The amendment provides that the extent of a departure based on coercion and duress ordinarily should depend on several considerations, including the proportionality of the defendant's actions to the seriousness of the coercion, blackmail, or duress involved.

Third, the amendment limits the availability of departures pursuant to § 5K2.13 (Diminished Capacity) by adding a causation element. The amendment provides that in order to receive a departure for diminished capacity, the significantly reduced mental capacity must have contributed substantially to the commission of the offense. The amendment similarly limits the extent of departure by stating that the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

Fourth, the amendment significantly restructures § 5K2.20 (Aberrant Behavior) and further restricts the availability of departures based on aberrant behavior. The Commission promulgated § 5K2.20 effective November 1, 2000, in order to resolve a longstanding circuit conflict and more properly define when a departure based on aberrant behavior may be warranted. *See* Appendix C, amendment 603. A departure based on aberrant behavior may be warranted only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

The amendment provides greater emphasis to these strict requirements by moving them from an application note to the body of the policy statement. The amendment also gives the court greater guidance in applying these requirements with a new application note that clarifies that repetitious or significant, planned behavior does not meet the requirements for receiving a departure under § 5K2.20. A fraud scheme, for example, generally would be prohibited from receiving a departure pursuant to § 5K2.20 because such a scheme usually involves repetitive acts, rather than a single occurrence or single criminal transaction, as well as significant planning.

The amendment also further restricts the availability of departures based on aberrant behavior by adding several strict prohibitions to the list that has existed in § 5K2.20 since its initial promulgation. Prior to this amendment, § 5K2.20 prohibited the court from departing based on aberrant behavior if (1) The offense involved serious bodily injury or death; (2) the defendant discharged a firearm or otherwise used a firearm or a dangerous weapon; (3) the instant offense of conviction is a serious drug trafficking offense; (4) the defendant has more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood); or (5) the defendant has a prior federal, or state, felony conviction, regardless of whether the conviction is countable under Chapter Four.

The amendment gives greater prominence to those previously existing prohibitions and expands them in significant ways. The amendment eliminates defendants who have any significant prior criminal behavior from consideration for a departure pursuant to § 5K2.20, regardless of whether such behavior is countable under Chapter Four, and even if such behavior is not a state or federal felony. In addition, the amendment expands the class of drug trafficking defendants prohibited from consideration for a departure pursuant to § 5K2.20 by expanding the definition of ''serious drug trafficking offense.'' Specifically, the amendment expands the definition of ''serious drug trafficking offense'' in the accompanying application note to include any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. 844, that provides a mandatory minimum term of imprisonment of five years or greater, regardless of whether the defendant meets the criteria of § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases). Prior to this amendment, only drug trafficking defendants who were subject to such mandatory minimum penalties and who did not meet the criteria set forth in § 5C1.2 were precluded categorically from consideration for a departure under § 5K2.20.

Part IV of the amendment substantially restructures § 4A1.3 (Departures Based on Inadequacy of Criminal History Category) to set forth more clearly the standards governing departures based on criminal history, to prohibit and limit the extent of departures based on criminal history for certain offenders with significant criminal history, and to require written specification of the basis for a criminal history departure.

Section 4A1.3(a) provides that an upward departure may be warranted if reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

Section 4A1.3(a) also more clearly sets forth previously existing guidance regarding determination of the extent of an upward departure based on criminal history. Similarly, § 4A1.3(b) provides that a downward departure may be warranted if reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

The amendment, however, adds several prohibitions and limitations to the availability of downward departures based on criminal history. It prohibits a downward departure based on § 4A1.3(b) if the defendant is an armed career criminal within the meaning of § 4B1.3 (Armed Career Criminal) or a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors). The Commission determined that such offenders should never receive a criminal history-based downward departure.

Section 4A1.3(b) reiterates the longstanding prohibition against a departure below the lower limit of the applicable guideline range for Criminal History Category I.

Section 4A1.3(b) also contains certain limitations on the extent of departure available under this provision. Specifically, a downward departure pursuant to this section for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

In addition, the amendment provides that a defendant whose criminal history category is Category I after receipt of a downward departure under § 4A1.3(b) does not meet the criterion of subsection (a)(1) of § 5C1.2 if, before receipt of the departure, the defendant had more than one criminal history point under § 4A1.1 (Criminal History Category). Thus, a departure to Category I cannot qualify an otherwise ineligible defendant for relief from an applicable mandatory minimum sentence under § 5C1.2, which is consistent with case law.

The amendment adds a new subsection, § 4A1.3(c), that requires the court, in departing based on criminal history, to set forth in writing the specific reasons why the applicable criminal history category under-represents or over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes. This specificity requirement is consistent with the PROTECT Act and is intended to facilitate both the necessary statutory and guideline departure analysis, as well as to improve the Commission's ability to refine the criminal history guidelines in light of criminal history departure decisions.

The amendment also makes conforming modifications to § 4A1.1 and § 5C1.2.

Part V of the amendment implements the directive at section 401(m)(2)(B) of the PROTECT Act by adding a new policy statement at § 5K3.1 entitled Early Disposition Programs. The provision restates the language contained in the directive and provides that, upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides. The Commission determined that implementing the directive in this manner is appropriate at this time, pending further study and monitoring of the implementation of early disposition programs.

Part VI of the amendment revises subsections (b) and (c) of § 6B1.2 (Standards for Acceptance of Plea Agreements) to require greater specificity in the sentencing documentation in a case involving a departure either recommended or agreed to in a Rule 11(c)(1)(B) or Rule 11(c)(1)(C) plea agreement. Specifically, if the court accepts such a plea agreement, and the recommended or agreed to sentence departs from the applicable guideline range for justifiable reasons, the amendment requires the court to set forth specifically those reasons in writing in the statement of reasons or judgment and commitment order. This specificity requirement is consistent with the PROTECT Act and is intended to facilitate the necessary statutory and guideline departure analysis, as well as to improve the Commission's ability to understand the underlying reasons for departures in cases involving plea agreements.

Part VII of the amendment creates a new guideline, 1A1.1 (Authority), that clearly sets forth the Commission's authority to promulgate guidelines, policy statements, and commentary and implements the Protect Act directive requiring conforming amendments to paragraph 4(b) of Part A of Chapter One. In addition, the amendment moves *in toto* Part A of Chapter One, as in effect on November 1, 1987, to the commentary as a historical note. Part A of Chapter One was an introduction to the Guidelines Manual that explained a number of policy decisions made by the Commission when it promulgated the initial set of guidelines. This introduction was amended occasionally between 1987 and 2003. The Commission determined that in order to preserve its historical significance and context, the introduction should be returned to its original form and placed in a historical note. The Commission encourages review of this material. The amendment also incorporates relevant portions of paragraph 4(b) of Part A of the former introduction regarding departures in the background commentary to § 5K2.0.

Part VII of the amendment amends § 1B1.1 (Application Instructions) to provide uniform definitions of departure, upward departure, and downward departure.

The amendment also makes technical amendments to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint).

This amendment complements other significant policy initiatives affecting sentencing, including the statutory changes in sentencing law and guideline changes directly made by the PROTECT Act, and recent policies implemented by the Department of Justice. The Commission believes that these general policy changes, working together, will substantially reduce the incidence of downward departures. In addition to the significant modifications made by this amendment, the Commission has identified several aspects of the guidelines affecting departures that it intends to continue studying during the current amendment cycle and beyond, including aberrant behavior, criminal history, immigration, early disposition, or ''fast track,'' programs, and collateral consequences, among others.

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Tuesday,
October 21, 2003

Part III

Department of Housing and Urban Development

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4861–N–01]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of $574 million for the HOPE VI Program. Of this amount, approximately $447.8 million in FY 2003 funds are available for the HOPE VI Revitalization Program and $40 million for the HOPE VI Demolition Program. The remaining funds will be made available for other purposes including Neighborhood Networks, technical assistance and Housing Choice Voucher Assistance.

General Section

The General Section of the HOPE VI NOFA contains information that applies to both the HOPE VI Revitalization and Demolition Programs. Detailed information on the specific guidance for each of these programs is included in separate sections of this NOFA. Unless otherwise noted, citations refer to the General Section.

I. Program Overview

(A) Purpose of the Program. In accordance with section 24(a) of the United States Housing Act of 1937 (1937 Act), the purpose of HOPE VI Revitalization grants is to assist public housing agencies (PHAs) to:

(1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

(2) Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

(3) Provide housing that will avoid or decrease the concentration of very low-income families; and

(4) Build sustainable communities.

(B) Available Funds. Approximately $447.8 million for HOPE VI Revitalization grants and $40 million for HOPE VI Demolition grants, in accordance with Section II below.

(C) Eligible Applicants. Public Housing Authorities that have severely distressed housing in their inventory and are otherwise in conformance with the threshold requirements provided in Section III of this NOFA. PHAs that only administer Housing Choice Voucher (Section 8, HCV) Programs and Tribal PHAs and Tribally-Designated Housing Entities are not eligible to apply.

(D) Application Deadline. Revitalization grant applications are due on January 19, 2004, as described in Section III(B) of this NOFA. Demolition grant applications are due on February 18, 2004, as described in Section III(B) of this NOFA.

(E) Authority. (1) The funding authority for HOPE VI Revitalization and Demolition grants under this HOPE VI NOFA is provided by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, approved on February 20, 2003) under the heading ''Revitalization of Severely Distressed Public Housing (HOPE VI).''

(2) The program authority for the HOPE VI Program is section 24 of the U.S. Housing Act of 1937 (42 U.S.C. 1437v), as amended by section 215 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2003 (Pub. L. 108–7, approved February 22, 2003).

II. Allocation of HOPE VI Funds

Type of assistance	Allocation of funds (approximate)	Funds available for award in this HOPE VI NOFA (approximate)
Revitalization Grants	$447,750,000	$447,750,000
Demolition Grants	40,000,000	40,000,000
Neighborhood Networks	5,000,000	.....
Technical Assistance	6,250,000	.....
Housing Choice Voucher Assistance	75,000,000	
Total	574,000,000	487,750,000

(A) Revitalization Grants. Approximately $447.8 million of the FY 2003 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this HOPE VI NOFA.

(B) Demolition Grants. Approximately $40 million of the FY 2003 HOPE VI appropriation has been allocated to fund HOPE VI Demolition grants and will be awarded in accordance with this HOPE VI NOFA.

(C) Neighborhood Networks. The FY 2003 appropriation for HOPE VI allocated $5 million for a Neighborhood Networks initiative for activities authorized in section 24(d)(1)(G) of the Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The availability of these funds will be announced in a separate NOFA and, in accordance with the appropriation, they will be awarded to PHAs on a competitive basis. PHAs that receive HOPE VI Revitalization grant funds under this NOFA are required to establish Neighborhood Networks and may use funds awarded under this NOFA for this purpose.

(D) Technical Assistance. The FY 2003 appropriation for HOPE VI allocated $6.25 million to provide technical assistance and contract expertise in the HOPE VI program, to be provided directly or indirectly by grants, contracts, or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of HUD and of PHAs, and to residents. The Office of Public Housing Investments will administer technical assistance funds.

(E) Housing Choice Voucher Assistance. The cost of Housing Choice Voucher (HCV) assistance that will be provided to FY 2003 HOPE VI Revitalization and Demolition grantees will come from the FY 2003 HOPE VI appropriation. Approximately $75 million will be allocated for such assistance. If this amount is more than the amount necessary, the remaining

funds will be used for eligible activities under Section 24 of the Act and made available for obligation before September 30, 2004.

(1) If you anticipate that you will need HCV assistance in order to carry out necessary relocation in conjunction with proposed revitalization during FY 2004, your application must include the number of vouchers you will need, both in total and in FY 2004, and a HCV application.

(2) If you will need HCV assistance in fiscal years beyond FY 2004 for revitalization or demolition that is being carried out in phases, or if you have unused Housing Choice Vouchers that are available to be used for HOPE VI-related relocation in FY 2003 but will need more for subsequent years, you must request additional vouchers only as needed during the appropriate fiscal years.

(3) HCV assistance cannot be awarded or used to relocate residents from units that are to be demolished until HUD has approved those units for demolition.

(4) If you have previously received HCV assistance to relocate residents from the targeted severely distressed units, you may still apply for a HOPE VI Revitalization grant to physically replace those same units, or a HOPE VI Demolition Grant to demolish the units without replacement.

(5) You may request HCV assistance for the relocation of families who intend to move back to the site upon completion of the demolition and revitalization of the severely distressed project. Such families are not required to move back to the site if they prefer to keep the HCV assistance after revitalization activities are completed.

(6) You may request HCV assistance for all units covered under a HOPE VI Revitalization or Demolition application to relocate residents from units that will not be replaced with hard units.

(7) Housing Choice Vouchers are available as replacement units for all units that will be demolished, sold, or otherwise disposed of at the severely distressed project(s), minus the number of HOPE VI-eligible replacement units otherwise to be provided under section 24(d)(1)(J) in connection with said project.

(8) In accordance with Section III(D)(8) of the Revitalization Section of this NOFA, to the extent that you need Housing Choice Vouchers for relocation purposes in connection with HOPE VI grant funds under this NOFA, in an amount that exceeds the number of units to be demolished, sold, or otherwise disposed of at the severely distressed project, you should apply for Housing Choice Vouchers in accordance with the separate funding notices to be issued by HUD.

(9) You must have a 97 percent lease-up rate or budget authority utilization rate for your current voucher program in order not to have your requested number of relocation/replacement vouchers reduced by HUD.

(F) HUD will not use any funds from this HOPE VI NOFA to fund any non-selected HOPE VI Revitalization or Demolition applications submitted in previous years. Only applications submitted under this FY 2003 HOPE VI NOFA will be considered for funding.

III. Application Submission Information

(A) Applications

(1) The HOPE VI Revitalization application and the HOPE VI Demolition application are appended to this NOFA. Each provides explicit, specific instructions as to the format and contents of your HOPE VI application. Your application must conform to the requirements of this NOFA and follow the format described in the application. The applications are designed to guide you through the application process and ensure that your application addresses all of the requirements of this NOFA. Please note that if there is a discrepancy between information provided in the application and the information provided in the NOFA, the information in the NOFA prevails.

(2) The HOPE VI Revitalization application and the HOPE VI Demolition application will be available from the HOPE VI Web site at *www.hud.gov/hopevi* and the HUD home page at *www.hud.gov/grants.* They will not be made available in hardcopy form.

(3) Signatures. Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designate, must sign each form or certification, whether part of an Attachment or a Standard Certification. Signatures need not be original in the copy version(s) of the applications.

(B) Application Submission Timeframes

(1) Revitalization Applications. Revitalization grant applications are due at HUD Headquarters on January 19, 2004.

(2) Demolition Applications. Demolition grant applications will only be accepted from January 5, 2004, through February 18, 2004. Applications received before January 5, 2004, will be returned to the applicant and will not be considered unless resubmitted on or after January 5, 2004, through February 18, 2004. Applications submitted outside of this timeframe will not be reviewed by HUD and will not be eligible for funding.

(3) These application deadlines are firm. Your application(s) must arrive at HUD by 5:15 p.m. on the due date. If you mail or give your application to an overnight carrier on the due date and it does not arrive by 5:15 p.m. on the due date, your application will not be considered. Submit your application early to avoid missing the deadline and being disqualified by unanticipated delays or other related problems.

(C) Application Delivery

(1) Revitalization Applications. Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number. The correct room number is very important to ensure that your application is not misdirected.

(2) Demolition Applications. Send the original of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number.

(3) Applications Sent by Overnight Delivery. It is strongly recommended that you send your application by an overnight carrier, at least two days before the application due date. You may use only DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service (USPS), as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD's Headquarters business hours, between 8:45 a.m. and 5:15 p.m., eastern time, Monday to Friday. If these companies do not serve your area, you must submit your application via USPS.

(4) Hand Carried Applications. Due to new security measures, HUD will no longer accept hand-carried applications.

(5) You must send one copy of your application (Revitalization and/or Demolition) to your HUD Field Office. The application sent to Headquarters will be the one that must meet the deadline. If the HUD Field Office receives an application on time, but the application is not received on time at Headquarters, it will not be considered.

(6) HUD will not accept for review and evaluation any applications sent by facsimile (fax). Also, do not submit resumes or videos.

(D) Technical Assistance

(1) Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. HUD staff, however, is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing- or speech-impairments may access this telephone number via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

(2) Frequently asked questions, clarifications, any technical corrections to the NOFA, and all materials related to this NOFA will be posted to the HUD home page at *www.hud.gov/offices/adm/grants/otherhud.cfm,* and on the HOPE VI Web site at *www.hud.gov/hopevi.* Any technical corrections will also be published in the **Federal Register** and posted to the above Web sites. Applicants are responsible for monitoring these sites during the application preparation period.

IV. Severe Distress of Targeted Public Housing

(A) *Threshold. Severe Distress.* (1) The public housing project or building in a project targeted by a HOPE VI Revitalization or Demolition application must be severely distressed. In accordance with section 24(j)(2) of the 1937 Act, the term ''severely distressed public housing'' means a public housing project (or building in a project):

(a) That:

(i) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project;

(ii) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(iii) (A) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or (B) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area;

(iv) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under sections 9 and 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, referred to as the Public Housing Reform Act)), because of cost constraints and inadequacy of available amounts; and

(v) In the case of individual buildings, is in the Secretary's determination sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for purposes of section 24 of the 1937 Act; or

(b) That was a project described in Section IV(A)(1)(a) that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance).

V. Fair Housing and Equal Opportunity

(A) *Threshold. Compliance with Fair Housing and Civil Rights Laws.* (1) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a), as applicable.

(2) As of the HOPE VI application due date, if you:

(a) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or

(c) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act; and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application.

(3) HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) A judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

(B) *Threshold. Desegregation Orders.* You must be in full compliance with any desegregation or other court order and Voluntary Compliance Agreements related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission.

(C) *Additional Nondiscrimination Requirements.* You and your subrecipients must comply with:

(1) Title IX of the Education Amendments Act of 1972.

(2) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*)

(D) *Ensuring the Participation of Disadvantaged Firms.* The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms (firms that pursue business development in areas designated as having high unemployment; see *http://www.uses.doleta.gov/lsa.asp* for more information) participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on Federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

(1) Placing disadvantaged firms on solicitation lists;

(2) Assuring that disadvantaged firms are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged firms;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (1) through (5) above.

(E) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at *www.hud.gov/fhe/sec3over.html.*

VI. Grant Implementation Requirements

(A) Conflict of Interest

(1) *Prohibition.* In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(2) *HUD-Approved Exception.*

(a) *Standard.* HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(b) *Procedure.* HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:

(i) An assurance that there has been public disclosure of the conflict;

(ii) A description of how the public disclosure was made; and

(iii) An opinion of the Grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(c) *Consideration of Relevant Factors.* In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization Plan and/or Demolition Activities that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization Plan and/or Demolition Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(vi) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(B) *Written Code of Conduct.* Entities subject to 24 CFR parts 84 and 85 are required to develop and maintain a written code of conduct (see sections 84.42 and 85.36(b)(3)). Your Code of Conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into an agreement with HUD, to submit a copy of your Code of Conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your Code of Conduct. Failure to meet the requirement for a Code of Conduct will prohibit you from receiving an award of funds from HUD.

(C) *OMB Circulars and Administrative Requirements.* You must comply with the following administrative requirements related to the expenditure of Federal funds. OMB Circulars can be found at *www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll free number). The Code of Federal Regulations can be found at *www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to non-profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) OMB Circular A–122 (Cost Principles for Non-Profit Organizations);

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

(D) *Labor Standards.* The following standards must be implemented as appropriate in regards to HOPE VI grants.

(1) Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are ''prevailing'' minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation other than nonroutine maintenance of a public housing project must be paid, as set forth in a wage determination that must be obtained by the PHA prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract.

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other Federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other Federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

(E) *Lead-Based Paint.* You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is 1–800–424–5323.

(F) *Internet Access.* You must have access to the Internet and provide HUD with e-mail addresses of key staff and contact people.

VII. Environmental Review

(A) *Environmental Review.* HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 and Section VII of this NOFA (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review). Revitalization grantees are subject to additional requirements found at Section XVII of the Revitalization Section of this NOFA.

(B) If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(C) If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–900, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(D) You may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the Responsible Entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(E) The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

(F) HUD's Environmental Web site is located at *http://hudstage.hud.gov/offices/cpd/energyenviron/environment/index.cfm*

VIII. Additional Governmental Requirements

(A) The Catalog of Federal Domestic Assistance (CFDA) Number for HOPE VI is 14.866. The CFDA is a government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to the public.

(B) Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

(C) Federalism. Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA 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 Executive Order.

(D) Intergovernmental Review of Federal Programs. Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform a State review function. The official listing of State Points of Contact (SPOC) for this review process can be found at: *www.whitehouse.gov/omb/grants/spoc.html.* States that are not listed on the Web site have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within

one of those States, you may send applications directly to HUD. If your State has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

(E) Prohibition Against Lobbying Activities. You are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities'' (SF LLL) any funds, other than federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. SF LLL is included in the HOPE VI Revitalization application and the Web sites listed in Section (III)(D)(2) of this NOFA. The Lobbying Disclosure Act of 1995 (Pub. L. 104–65), approved December 19, 1995, repealed section 112 of the HUD Reform Act, and requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(F) Documentation and Public Access Requirements. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) Disclosures. HUD will make available for public inspection all HOPE VI grant applications for five years beginning not less than 30 days following the grant award. Applications will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) Publication of Recipients of HUD Funding. HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act, and/or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(G) Section 103 of the HUD Reform Act. HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants or HUD employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(H) Paperwork Reduction Act Statement. The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(I) Delinquent Federal Debt. Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of Federal funds shall be made to an applicant who has an outstanding Federal debt until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Housing and Urban Development are made prior to the deadline submission date.

(J) Pre-Award Accounting System Survey. HUD may arrange for a pre-award accounting system survey of the applicant's financial management system in cases where the recommended applicant has no prior Federal support, the applicant is considered a high risk based upon past performance or financial management findings. HUD will not make an award to any applicant who does not have a financial management system that meets Federal standards.

(K) False Statements. A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

(L) Name Check Review Process. Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if key individuals have been convicted or are presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individuals, HUD reserves the right to: (a) Deny funding or consider suspension/termination of an award immediately for cause; (b) require the removal of any key individual from association with management of and/or implementation of the award; and (c) make appropriate provisions or revisions with respect to the method of payment and/or financial reporting requirements.

(M) Executive Order 13202, Preservation of Open Competition and

Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects. Compliance with HUD regulations at 24 CFR 5.108 implementing Executive Order 13202 is a condition of receipt of assistance under this NOFA. Subgrantees are considered recipients of financial assistance for purposes of § 5.108.

(N) Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a state, including PHAs, that are using assistance under this NOFA for procurement, and any person contracting with such agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(O) 31 U.S.C. 1552. In accordance with this statute, all FY 2003 HOPE VI funds must be expended by September 30, 2009. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

Dated: October 14, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

HOPE VI Revitalization Grants Section

The Revitalization Grants Section of the HOPE VI NOFA contains information that applies to the HOPE VI Revitalization Program. Unless otherwise noted, citations refer to the HOPE VI Revitalization Grants Section.

I. Eligible Revitalization Activities

HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with section 24(d) of the U.S. Housing Act of 1937 Act (1937 Act). Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA.

(A) Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See section IX of this NOFA for relocation requirements.

(B) Demolition of dwelling units and nondwelling facilities, in whole or in part.

(1) Demolition is not a required element of a HOPE VI Revitalization Plan.

(2) You may not carry out, nor permit others to carry out, the demolition of the Project or any portion of the Project until HUD approves, in writing, one of the following:

(a) Information in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant and a Request for Release of Funds submitted in accordance with 24 CFR part 58. Section 24(g) of the 1937 Act provides that severely distressed public housing demolished pursuant to a Revitalization Plan is not required to be approved by a demolition application under section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under section 18 of the 1937 Act. While a section 18 approval is not required by HOPE VI demolition, you will not have to wait for demolition approval through your Supplemental Submissions, as described in section (a) above; or

(c) A Section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 Pub. L. 104–134, approved on April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

(C) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or more that is not incident to the normal operation of a Project is considered to be a disposition that is subject to section 18 of the 1937 Act.

(D) Rehabilitation and physical improvement of public housing and/or community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o) and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

(E) Development.

(1) For any standard (non-mixed finance) public housing development activity, (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a Mixed Finance Proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a Standard or Mixed Finance Development Proposal, as applicable.

(F) Homeownership Activities.

(1) For homeownership replacement units developed under a Revitalization Plan, you must obtain HUD approval of a homeownership proposal. The homeownership proposal must be consistent with the 80 percent of Area Median Income (AMI) limitations and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *www.huduser.org/datasets/il/fmr01/index.html*). See Section XI(D) of this NOFA (mixed-income communities) for more information about homeownership housing. Your homeownership proposal must conform to either:

(a) Section 24(d)(1)(J) of the 1937 Act; or

(b) Section 32 of the 1937 Act (see 24 CFR 906). Additional information on this option may be found at: *www.hud.gov/offices/pih/centers/sac/homeownership*.

(2) Assistance may include:

(a) Downpayment or closing cost assistance;

(b) Provision of second mortgages; and/or

(c) Construction or permanent financing for new construction, acquisition, or rehabilitation costs

related to homeownership replacement units.

(G) Acquisition.

(1) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must submit a Development Proposal in accordance with CFR part 941.304 (conventional development) or 24 CFR 941.606 (mixed finance development).

(2) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(3) Land for Economic Development-Related Activities.

(a) You may use HOPE VI grant funds to acquire land for economic development-related activities if those activities specifically promote the economic self-sufficiency of residents.

(b) With HUD approval, you may also use HOPE VI grant funds for limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site.

(c) You may not use HOPE VI grant funds to pay hard construction costs or to buy equipment for retail, commercial, or non-public housing office facilities.

(4) Acquisition Proposal. Before you may undertake acquisition activities with HOPE VI or other public housing funds, you must submit an acquisition proposal to HUD that meets the requirements of 24 CFR 941.303.

(H) Necessary management improvements, including transitional security activities.

(I) Reasonable costs for administration, planning, technical assistance, and fees and costs, as established by HUD guidance and policies regarding cost controls. These costs are limited to the costs of implementing the Revitalization Plan, as specifically approved by HUD, such as fees for architectural and engineering work, program management (if any), and reasonable legal fees. See Section III(C)(3) for soft development costs guidelines.

(J) Community and Supportive Services (CSS). The CSS Component of the HOPE VI Program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved. The CSS Component is described in Section VIII of this NOFA.

(K) Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

II. Summary of Threshold Requirements

(A) The following are summary descriptions of threshold requirements that must be met in order for a HOPE VI Revitalization application to be considered for funding. These threshold requirements are described in more detail at the citations identified below. If the application fails to meet any one of these thresholds, HUD will not rate or rank the application, in accordance with Section XIV(B)(5) of this NOFA.

(B) Unless specifically stated that an item is curable, the threshold items in this Section II(B) are not subject to Section XIV(B)(3) of this NOFA regarding the correction of deficiencies.

(1) The applicant must qualify as an eligible applicant, as defined in Section IV(A)(1) of this NOFA.

(2) HUD must receive the application by the deadline date and time, in accordance with Section III(B) of the General Section of this NOFA.

(3) Standard certifications must be submitted in accordance with Section XIII(A)(4) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(4) The application must include a certification by a third party professional that the proposed costs meet the requirements of Section III(C) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(5) In accordance with Section III(D)(1) of this NOFA, each applicant may submit only one HOPE VI Revitalization application.

(6) If an application proposes to revitalize more than one severely distressed public housing project, those projects must meet the requirements of Section III(D)(3) of this NOFA.

(7) If an application proposes to revitalize a severely distressed scattered site project, the project must meet the requirements of Section III(D)(4) of this NOFA.

(8) An application may not request HOPE VI Revitalization grant funds to revitalize units that were funded by an existing HOPE VI Revitalization grant, in accordance with Section III(D)(6) of this NOFA.

(9) If an application proposes to use HOPE VI Revitalization funds to develop market rate units or affordable units which do not qualify as replacement units in accordance with Section III(D)(7) of this NOFA, the entire application will be disqualified.

(10) If applicable, the application must meet the requirements of separability, as described in Section III(D)(11) of this NOFA.

(11) If an applicant has been designated as troubled, it must meet the requirements of Section IV(A)(1) of this NOFA.

(12) An applicant must have obligated at least 90 percent of its FY 1999–2001 Capital Funds in accordance with Section IV(A)(2) of this NOFA.

(13) An applicant which has one or more existing HOPE VI Revitalization grants will be disqualified if it has an open Inspector General (IG) or General Accounting Office (GAO) audit finding related to the HOPE VI or Capital Fund Programs as of the application due date, in accordance with Section IV(A)(3) of this NOFA.

(14) An applicant must provide a signed certification that it has either initiated competitive procurement procedures to select a developer by the application deadline date or that it will act as its own developer, in accordance with Section IV(A)(4) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(15) An application must include a program schedule that, at a minimum, reflects the timeliness of construction requirements of Section XVI(C) of this NOFA, in accordance with Section IV(C).

(16) An application must include a signed certification that the applicant or its procured property manager will implement the operation and management principles and policies in accordance with Section IV(A)(5) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(17) An application must include a certification signed by an engineer or architect that the targeted public housing project meets the definition of severe physical distress in accordance with Section V(A) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(18) An application must include commitments of resources in an amount that meets the match requirements of Section VI(A) of this NOFA.

(19) An application must include a certification by the applicant that a resident training session and public meetings were held in accordance with Section VII(A) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(20) An application must include a certification that the applicant has

completed a HOPE VI Revitalization Relocation Plan and that the Relocation Plan is in compliance with the Uniform Relocation Act, as described in Section IX(D) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(21) An applicant must be in compliance with Fair Housing and Civil Rights Laws, in accordance with Section V(A) of the General Section of this NOFA.

(22) An applicant must be in compliance with any desegregation or other court order related to Fair Housing, in accordance with Section V(B) of the General Section of this NOFA.

(23) If an application includes a proposal to develop off-site replacement housing, the application must include evidence of site control of the proposed off-site locations, in accordance with Section XI(B)(4) of this NOFA.

(24) If an application includes a proposal to develop market rate housing, it must include a preliminary market assessment letter, in accordance with Section XI(C) of this NOFA. Deficiencies for this item are curable, in accordance with Section XIV(B)(3) of this NOFA.

(25) If you are proposing to use off-site parcels of land for housing development or other uses that are currently zoned for a purpose different than the one proposed in your revitalization plan, your application must include a certification from the appropriate local official documenting that all required zoning approvals have been secured for such parcels, and/or the actual zoning approval document for the parcel(s), in accordance with Section XI(E) of this NOFA.

(26) An application must include a demonstration of the appropriateness of the proposal, in accordance with Section XII(A) of this NOFA.

(27) An application must include a certification that, if awarded funds under this NOFA, the Grantee will submit a copy of their Code of Conduct which will also describe the methods they will use to ensure that all officers, employees, and agents of their organization are aware of the Code of Conduct, in accordance with Section VI(B) of the General Section of this NOFA. This certification may be provided in the form of a letter.

(28) Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of Federal funds shall be made to an applicant who has an outstanding Federal debt in accordance with Section VIII(I) of the General Section of this NOFA. HUD will determine compliance with this threshold.

(29) An applicant must have a financial management system that meets Federal standards, in accordance with Section VIII(J) of the General Section of this NOFA. HUD will determine compliance with this threshold.

(30) Applicants are subject to a name check review process, in accordance with Section VIII(L) of the General Section of this NOFA. HUD will determine compliance with this threshold.

III. Revitalization Grant Limitations

(A) Grant Amount Limitations

(1) The total amount you may request in your Revitalization application is limited to $20 million or the sum of the amounts in Section III(A)(2), whichever is lower.

(2) Total Development Cost (TDC). The ''TDC Limit'' refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing units in a given location. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds; a PHA may exceed the TDC limit using non-public housing funds such as CDBG, HOME, low-income housing tax credit equity, etc. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. Use the TDC limits in effect at the time this HOPE VI NOFA is published when making your TDC calculations (24 CFR 941, final rule published in the **Federal Register** on December 10, 2002. The TDC final rule may be found in the **Federal Register**, Vol. 67, No. 237, 76096 and on the HOPE VI Web site).

(a) The total cost of development, including relocation costs, is limited to the sum of:

(i) HUD's TDC limits up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and/or

(ii) 90 percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(b) The TDC limit for a project is made up of the following components:

(i) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon wage rate requirements as described in Section VI(D) of the General Section of this NOFA.

(ii) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (i) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on site, and all other development costs.

(3) CSS. You may request an amount up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in Section VIII(B) of this NOFA. These costs are in addition to (*i.e.*, excluded from) the TDC calculation in Section (2) above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (*i.e.*, excluded from) the TDC calculation in Section (2) above.

(5) Extraordinary Site Costs.

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect, and are approved by HUD, they may be excluded from the TDC calculation Section (2) above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, *etc.;* and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and State of registration. An Extraordinary Site Costs Certification is included in the HOPE VI application. If this certification is not included in the application after the cure period described in Section XIV(B)(3) of this NOFA, extraordinary site costs will not be allowed.

(B) Other Application Limitations

You may not use HOPE VI Revitalization Grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

(C) Hard and Soft Development Costs Guidelines

(1) Your projected hard development costs must be realistic, developed through the use of technically competent methodologies, including cost estimating services, and comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's ''Safe Harbor'' cost control standards. These safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on the Grant Administration page of the HOPE VI Web site at *http://www.hud.gov/utilities/intercept.cfm?/offices/pih/programs/ph/hope6/grants/admin/safe_harbor.pdf.*

(4) *Threshold:* Your cost estimates must be certified to meet the standards of Sections (1) through (3) above by an independent cost estimator, architect, engineer, contractor, or other qualified third party professional.

(5) If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly, except as provided in Section III(D)(7) of this NOFA. (D) Site and Unit Requirements.

(1) *Threshold:* One application. Each applicant may submit only one HOPE VI Revitalization application as described in this NOFA. If more than one application is submitted by a single applicant, all applications will be disqualified.

(2) *Threshold:* One Project. Except as provided in Sections III(D)(3) and (4) below, each application must target one severely distressed public housing project (*i.e.*, with one project number).

(3) *Threshold:* Contiguous Projects. Each application may request funds for more than one project if those projects are immediately adjacent to one another or within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are within a quarter-mile of each other. If HUD determines that they are not, your application will be ineligible for funding.

(4) *Threshold:* Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within an area with a one-mile radius. You may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (*e.g.*, major highways, railroad tracks, lakeshore, *etc.*) of a neighborhood. If you propose to revitalize a project that extends beyond a one-mile radius or is otherwise beyond the hard edges of a neighborhood, your application will be ineligible for funding.

(5) Number of Units. You may request funds for as few or as many units as you wish in your application. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

(6) *Threshold:* Previously-funded Sites. You may submit a Revitalization application that targets a project that is being revitalized or replaced under an existing HOPE VI Revitalization grant. However, you may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant or other HUD funds, even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY 2003 HOPE VI Revitalization application to revitalize the remaining 400 units. You may *not* apply for funds to supplement work on the original 300 units. If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Grant or other HUD funds, your application will be ineligible for funding.

(7) *Threshold:* HOPE VI funds may not be used to develop market rate units or affordable housing units which do not qualify as public housing or homeownership replacement units.

(8) Replacement Units. Under this HOPE VI NOFA, a HOPE VI Replacement unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under section 24(d)(1)(J) of the 1937 Act, and Housing Choice Voucher assistance that does not exceed the number of units demolished and/or disposed of at the targeted severely distressed public housing project.

(9) Access to Services. For both on-site and any off-site units, your overall Revitalization Plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; *i.e.*, the physical plan and self-sufficiency strategy must be well integrated and strong linkages must be established with the appropriate Federal, State, and local agencies, non-profits, and the private sector to achieve such access.

(10) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can benefit persons with disabilities. To order a copy of *Strategies for Providing*

Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership, go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html.*

(11) *Threshold.* Separability. In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, you must:

(a) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization, and

(b) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

IV. Capacity

(A) Thresholds

(1) *Threshold:* Troubled Status. If HUD has designated your housing authority as troubled pursuant to section 6(j)(2) of the 1937 Act, HUD's Troubled Agency Recovery Centers will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with section 24(j) of the 1937 Act, the term ''applicant'' means:

(a) Any PHA that is not designated as ''troubled'' pursuant to section 6(j)(2) of the 1937 Act;

(b) Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 6(j)(3) of the 1937 Act; and

(c) Any PHA that is designated as ''troubled'' pursuant to section 6(j)(2) of the 1937 Act and that:

(i) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(ii) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status; or

(iii) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

(2) *Threshold:* Obligation of Capital Funds. In order to be considered for funding, you must have obligated Capital Fund amounts (including the Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP) in a timely manner. HUD will not consider any application from a PHA that failed to obligate 90 percent or more of its FY 1999, 2000, and 2001 Capital Funds by the applicable obligation deadlines, as required by section (9)(j) of the U.S. Housing Act of 1937, unless the Deputy Secretary has approved an extension. HUD will use LOCCS to determine compliance with the applicable obligation deadlines. Replacement Housing Factor funds are not excluded from the calculation of Capital Fund obligation rates, pursuant to 24 CFR 905.10(i), as they are part of the Capital Fund Program formula allocation. Some PHAs have executed Moving To Work (MTW) Agreements that exempt the PHA from the statutory Capital Fund obligation and expenditure deadlines. Accordingly, those PHAs will not be subject to this provision.

(3) *Threshold:* Performance of Existing HOPE VI Grantees. If an applicant has one or more existing HOPE VI Revitalization grants, the Department will disqualify such an applicant if the applicant has an open Inspector General (IG) or General Accounting Office (GAO) audit finding related to the HOPE VI or Capital Fund Programs as of the date the application is due to HUD.

(4) *Threshold:* Selection of Developer. In a departure from previous years, in order to be selected for funding, you must provide a signed certification that:

(a) You have initiated RFQ competitive procurement procedures in accordance with 24 CFR 85.36 and 23 CFR 941.602(d) (as applicable), but have not entered into a contract with a developer for your first phase of construction by the application due date. A developer is an entity contracted to develop (and possibly operate) a mixed finance development that includes public housing units, pursuant to 24 CFR part 941 subpart F, and contingent on a satisfactory environmental review under 24 CFR part 58 or part 50, under the terms of a HUD-approved proposal. A developer most often has an ownership interest in the entity that is established to own and operate the replacement units (*e.g.* as the General Partner of a Limited Partnership). It is not necessary to have executed a Master Development Agreement with the selected developer in order to meet the threshold. If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(5) *Threshold:* Operation and Management Principles and Policies.

(a) Authority. Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the Annual Contributions Contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110 if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

(b) Requirements. HOPE VI Revitalization Grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. In your application, you must provide a certification that you will ensure that you and/or your procured property manager have complied (to the extent required) with the provisions of 24 CFR 966.3 in planning for the implementation of the operation and management principles and policies described below.

(i) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(ii) Instituting a system of local preferences adopted in response to local housing needs and priorities, *e.g.*, preferences for victims of domestic violence, residency preferences, disaster victims;

(iii) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(iv) Implementing site-based waiting lists for the redeveloped public housing and/or following project-based management principles;

(v) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(vi) Strictly enforcing lease and eviction provisions;

(vii) Improving the safety and security of residents through the implementation

of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, *etc;*(viii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with Federal, State, and local crime prevention programs and entities such as:

(A) Local law enforcement agencies;

(B) Your local United States Attorney;

(C) The Weed and Seed Program, if the targeted project is located in a designated Weed and Seed area. Operation Weed and Seed is a multi-agency strategy that ''weeds out'' violent crime, gang activity, drug use, and drug trafficking in targeted neighborhoods and then ''seeds'' the target area by restoring these neighborhoods through social and economic revitalization. Law enforcement activities constitute the ''weed'' portion of the program. Revitalization, which includes prevention, intervention, and treatment services as well as neighborhood restoration, constitutes the ''seed'' element. HUD has provided the Department of Justice with $10 million to fund Weed and Seed Strategies that fight crime and drugs in public, Indian, and federally assisted housing. For more information, see the Community and Safety and Conservation Web site at *www.hud.gov/offices/pih/divisions/cscd/.*

(B) Rating Factor: Capacity—20 Points Total

The term ''your Team'' includes your HOPE VI Coordinator (an individual designated by the PHA who may be a staff member or contractor), PHA staff who will be involved in HOPE VI grant administration, and developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and/or proposed to carry out program activities.

(1) *Development Capacity.*

(a) Capacity of Developer—6 Points.

(i) You will receive 6 Points if:

(A) Your Developer or other Team members have extensive, recent (within the last five years), and successful experience in planning, implementing, and managing physical development, financing, leveraging, and partnership activities that are comparable in character, scale, and complexity to your proposed revitalization activities;

(B) You propose development using low-income tax credits, and you, your Developer, or other Team members have relevant tax credit experience; and

(C) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, you, your Developer, or other Team members have relevant, successful experience in development, sales, and/or conversion activities.

(ii) You will receive 4 Points if your Developer or other Team members have some but not extensive experience in the factors described above.

(iii) You will receive 0 Points if your Developer or other Team members do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization Plan. You will also receive 0 Points if there is inadequate information in your application to rate this factor.

(b) Development Capacity of Applicant—6 Points.

(i) You will receive 6 Points if:

(A) You have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order to successfully implement your Revitalization Plan;

(B) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 23 months of the award of the grant.

(C) *Threshold:* Your application must contain a program schedule that provides a feasible plan to meet the schedule requirements of Section XVI(C) of this NOFA, with no impediments such as litigation that would prevent timely startup. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

(D) Your management experience and previous experience with development activities demonstrates that you have experience in overseeing large scale development, whether it be in-house or implemented by a private entity. In your application, you will describe the dollar amount and timeframe for completion of the project(s); and

(E) As of the HOPE VI Revitalization application due date, you do not have any outstanding Comprehensive Grant, Comprehensive Improvement Assistance Program, or Capital Fund Program IG audit findings. If you have such a finding, you cannot receive 6 Points.

(ii) You will receive 4 Points if you have had experience in managing large scale development in accordance with the factors above, but your experience has not been extensive and/or your project(s) were not completed within the timeframe originally established for the project.

(iii) You will receive 1 Point if your application indicates that you have had little experience in managing large-scale development projects. Or, you will receive 1 Point if you have experience described in (i) or (ii) above, but have an outstanding audit finding related to the Comprehensive Grant program, Comprehensive Improvement Assistance Program, or Capital Fund Program.

(iv) You will receive 0 Points if you do not demonstrate any experience in managing development activities, or if there is inadequate information in your application to rate this factor.

(2) *Capacity of Existing HOPE VI Revitalization Grantees.* This section applies only to applicants that have received HOPE VI Revitalization grants for fiscal years 1993–2000. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, not averaged, and the highest deduction will be made. Applicants with HOPE VI Revitalization grants only from FY 2001 or FY 2002, or no existing HOPE VI Revitalization grants are not subject to this section. As indicated in the following tables, up to 5 Points will be deducted if a Grantee has failed to achieve adequate progress in relation to cumulative unit production goals. Production achievement numbers will be taken from the quarterly reporting system for the quarter most recently completed at the time the NOFA is published in the **Federal Register**.

Percent of unit production completed	Points deducted
Grants Awarded in FY 1993–1996	
95–100	0
90–94	1
85–89	2
80–84	3
75–79	4
Less than 75	5
Grants Awarded in FY 1997	
90–100	0
80–89	1
75–79	2
70–74	3
65–69	4
Less than 65	5
Grants Awarded in FY 1998	
80–100	0
70–79	1
60–69	2
50–59	3
40–49	4
Less than 40	5

Percent of unit production completed	Points deducted
Grants Awarded in FY 1999	
60–100	0
50–59	1
40–49	2
30–39	3
20–29	4
Less than 20	5
Grants Awarded in FY 2000	
25–100	0
20–24	1
15–19	2
10–14	3
5–9	4
Less than 5	5

(3) CSS Program Capacity—3 Points.

You can receive points for proper demonstration in your application of CSS Program capacity. See Section VIII(B) of this NOFA for detailed information on CSS activities.

(a) You will receive 2 Points if you demonstrate one of the following. If you fail to demonstrate one of the following, you will receive 0 points:

(i) If you propose to carry out your CSS Plan in-house and you have recent, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(ii) If you propose that a member(s) of your Team will carry out your CSS Plan, that this procured Team member(s) has the qualifications and experience to plan, implement, manage, and coordinate the types of activities proposed, and/or that you have a plan for promptly hiring staff or procuring a Team member to do so.

(b) If you have an existing HOPE VI grant, you will receive 1 Point if you demonstrated that your proposed CSS Team will be adequate to implement a new program without weakening your existing Team. In doing so, you must describe how you plan to accommodate or expand capacity to support new or changing services. If you do not have an existing HOPE VI Revitalization grant, demonstrate how your current proposed CSS Team will be adequate to implement a new program without weakening your existing staffing structure. In doing so, you must describe how you plan to accommodate or expand capacity to support new or changing services.

(4) Property Management Capacity—4 Points.

(a) Property management activities may be the responsibility of the PHA or another member of the Team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(b) Past Property Management Experience—3 Points.

(i) You will receive 3 Points if: You or your property manager currently has extensive knowledge and recent (within the last five years), successful experience in property management of the housing types included in your revitalization plan. This may include market rate rental housing, public housing, and/or other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization Plan includes cooperatively-owned housing, rent-to-own units, or other types of managed housing, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your Team.

(ii) You will receive 1 Point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization Plan.

(iii) You will receive 0 Points if your application does not demonstrate that you or your property manager has the capacity to manage your proposed plan, or if there is inadequate information in your application to rate this factor.

(c) Property Management Plan—1 Point.

(i) You will receive 1 Point if your application provides a detailed description of the goals and plans of you or your property manager to administer the following elements:

—Property maintenance;
—Rent collection;
—MTCS reporting;
—Site-based management experience;
—Tenant grievances;
—Evictions;
—Occupancy rate;
—Unit turnaround;
—Preventive maintenance;
—Work order completion;
—Project-based budgeting;
—Management of Homeownership and rent-to-own programs; and
—Energy Audits.

(ii) You will receive 0 Points if there is insufficient information in your application to rate this factor.

(5) PHA Plan—1 Point.

(a) You will receive 1 Point if you demonstrate that you have incorporated the revitalization plan described in your application into your most recent PHA Plan (whether approved by HUD or pending approval). In order to qualify as ''incorporated,'' your PHA Plan must indicate the intent to pursue a HOPE VI Revitalization grant and the public housing development for which it is targeted.

(b) You will receive 0 Points if you have not incorporated the revitalization plan described in your application into your PHA Plan, or if there is insufficient information in your application to rate this factor.

V. Need

(A) Threshold: Severe Distress

(1) The targeted public housing project or building in a project must be severely distressed. In accordance with Section 24(j)(2) of the 1937 Act, the term ''severely distressed public housing'' means a public housing project (or building in a project):

(a) That:

(i) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plan of the project;

(ii) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(iii) (A) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or (B) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area;

(iv) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under sections 9 and 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, referred to as the Public Housing Reform Act), because of cost constraints and inadequacy of available amounts; and

(v) In the case of individual buildings, is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization; or

(b) That was a project described in section V(A)(1)(a) that has been legally

vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance).

(2) For the purposes of this threshold, Replacement Housing Factor funds will not be considered as ''replacement housing assistance.''

(3) A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress as of the day the demolition application approval letter was dated by HUD.

(4) To meet the severe distress requirement, you must certify that the public housing project or building in a project targeted in your HOPE VI application meets the definition of severe distress provided in Section V(A)(1). You will make this certification by signing the HOPE VI Revitalization Grant Applicant Certifications. The certification form is included in the HOPE VI Application and is included as part of Appendix A to this HOPE VI NOFA.

(5) In order to certify to the severe physical distress described in Section V(A)(1)(a) of this NOFA, your application must include a certification that is signed by an engineer or architect licensed by a State licensing board. The license does not need to have been issued in the same State as the severely distressed project. The engineer or architect must include his or her license number and State of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city.

(B) Rating Factor: Need—24 Points Total

(1) Need for Revitalization: Severe Physical Distress of the Public Housing Development—10 Points

HUD will evaluate the extent of the severe physical distress of the targeted public housing development. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive Points for the following separate subfactors, as indicated.

(a) You will receive 2 Points if you demonstrate that there are major deficiencies in the project's infrastructure, roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and/or other deficiencies in Housing Quality Standards.

(b) You will receive 2 Points if you demonstrate that there are poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and/or inappropriate topography.

(c) You will receive 3 Points if you demonstrate that the project has at least 3 of the following major design deficiencies, including:

(i) Inappropriately high population density, room, and/or unit size and configurations;

(ii) Isolation;

(iii) Indefensible space;

(iv) Significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and/or

(v) Inaccessibility for persons with disabilities with regard to individual units, entrance ways, and/or common areas.

(d) You will receive 3 Points if you demonstrate that there are (or were, if the site is already demolished) levels of unmitigated lead-based paint, PCBs, mold, and/or asbestos that make the site or a portion of the site and its housing structures unsuitable for residential use.

(2) Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood—3 Points

HUD will evaluate the extent to which the severely distressed public housing project is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood. In making this determination, HUD will evaluate your description of your narrative, crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and indications of neighborhood disinvestment.

(a) You will receive 3 Points if your narrative adequately demonstrates that the project has a significant impact on the surrounding neighborhood, as documented by each item listed above.

(b) You will receive 2 Points if your narrative demonstrates that the project has a moderate impact on the neighborhood, and/or only some of the items listed above are adequately documented.

(c) You will receive 0 Points if your narrative does not demonstrate that the project has an impact on the surrounding neighborhood, or there is inadequate information in your application to rate this factor.

(3) Need for Funding: Obligation of Capital Funds—8 Points

HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available Capital Funds indicate that the revitalization could be carried out without a HOPE VI grant. HUD will use data from LOCCS available at the time of the grant application deadline date to determine the amount of unobligated FY 1999–2002 Capital Grant (including CIAP and CGP) funds currently available that could be used to carry out the proposed revitalization activities. Applicants must ensure that their obligation and expenditure information was updated in LOCCS prior to the application deadline. Replacement Housing Factor funds are not excluded from the calculation of Capital Fund obligation rates, pursuant to 24 CFR 905.10(i), as they are part of the Capital Fund Program formula allocation. Information provided in the application will not be considered, except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements. Those PHAS must provide a certification of their obligation rate in their applications in order to receive any points for this rating factor.

(a) You will receive 8 Points if your unobligated Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(b) You will receive 6 Points if your unobligated balance is 21–45 percent of the amount of HOPE VI funds requested.

(c) You will receive 4 Points if your unobligated balance is 46–70 percent of the amount of HOPE VI funds requested.

(d) You will receive 2 Points if your unobligated balance is 71 to 90 percent of the amount of HOPE VI funds requested.

(e) You will receive 0 Points if your unobligated balance is more than 90 percent of the amount of HOPE VI funds requested.

(4) Need for Affordable Accessible Housing in the Community—3 Points

The applicant must demonstrate the need for affordable housing in the community. For purposes of this competition, the need for affordable housing in the community will be measured by Housing Choice Voucher program utilization rates and public housing occupancy rates, excluding the public housing site targeted for revitalization. This information must be demonstrated and documented in your application, as described below and

must be the most recent information available at the time of the application deadline. In figuring the Housing Choice Voucher utilization rate, provide the percentage of units under lease out of the total authorized. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your public housing inventory, not including the targeted public housing site. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(a) You will receive 3 Points if :

(i) The utilization rate of your Housing Choice Voucher program is 97 percent or higher; and/or

(ii) The occupancy rate of your public housing inventory is 97 percent or higher.

(b) You will receive 2 Points if:

(i) The utilization rate of your Housing Choice Voucher program is between 95 and 96 percent; and/or

(ii) The occupancy rate of your public housing inventory is between 95 and 96 percent.

(c) You will receive 1 Point if:

(i) The utilization rate of your Housing Choice Voucher program is between 93 and 94 percent; and/or

(ii) The occupancy rate of your public housing inventory is between 93 and 94 percent.

(d) You will receive 0 Points if:

(i) The utilization rate of your Housing Choice Voucher program is less than 93 percent and/or

(ii) The occupancy rate of your public housing inventory is less than 93 percent.

VI. Match and Leveraging

(A) Match Requirements

(1) Overall Match. In accordance with section 24(c) of the 1937 Act, if you are selected for funding, you must supplement your HOPE VI Revitalization grant with funds from other sources greater than or equal to 5 percent of the HOPE VI funds provided.

(2) Additional Community and Supportive Services (CSS) Match. In addition to supplemental amounts provided as Overall Match in accordance with Section (1) above, if you are selected for funding and propose to use more than 5 percent of your HOPE VI grant for CSS activities (you may use up to 15 percent of your grant for such activities), you must provide supplemental funds from sources other than HOPE VI, for the amount over 5 percent of the grant that you will use for CSS activities.

(3) In accordance with section 24(c) of the Act, for purposes of calculating the amount of matching funds required by Sections (1) and (2), you may include amounts from other Federal sources, any state or local government sources, any private contributions, the value of donated material or building, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

(4) Matching funds must be directly applicable to the revitalization of the site and the transformation of the lives of residents.

(5) Grantees must provide matching funds which, combined with HOPE VI funds, will enable them to carry out revitalization activities, including CSS activities. Applicants must show firm commitments in the amounts required for match in their applications in order to be funded. Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

(6) Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was used for leverage in their HOPE VI applications.

(7) *Threshold:* You must provide evidence that you have met your match requirements in the application. This means that the amount of Overall Match accepted by HUD must be at least 5 percent of the total grant. You must also meet the CSS Match Requirement (*i.e.*, you must provide supplemental funds from sources other than HOPE VI, for the amount over 5 percent of the grant that you will use for CSS activities). For example, a request for 15 percent of the grant for CSS would require that the amount of funds over that first 5 percent be matched dollar for dollar (*i.e.*, a 10 percent match of other CSS resources).

(B) Leverage

Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested.

(C) Documentation for Development and CSS Resources

In your application, you will enter basic information about each resource on the appropriate resource summary form: Name of the organization providing the resource, the dollar value of the resource, and its proposed use.

(1) For each resource you list, you *must* provide a commitment document, such as a letter, memorandum of understanding, agreement to participate, city council resolution, or other evidence of the resource to be committed, which may be subject to the receipt of a HOPE VI Revitalization grant. An official of the organization legally authorized to make commitments on behalf of the organization must sign the commitment document.

(2) Each commitment document must include the dollar value and time duration of the commitment (*e.g.*, $10,000 will be provided each year for 4 years for a total commitment of $40,000). The dollar value must be consistent with the amount entered on the resource summary form. On the form you will also enter the page number of your application where the commitment document is located.

(3) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(4) Each resource may be used for only one category: Development, CSS, Anticipatory, or Collateral, as described below. Any resource listed in more than one category will be disqualified from all categories.

(5) For CSS purposes, include only funds that will be newly generated for HOPE VI activities. HUD will not count any funds that have been provided routinely, such as TANF payments or funds that support ongoing CSS-type activities. However, if an existing service provider significantly increases the level of services provided at the site, the increased amount of funds may be counted.

(6) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may

not be used to offset costs for infrastructure.

(D) Types of Development Resources

HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other physical development funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market rate housing, and private retail and economic development. Types of resources that may be counted include:

(1) Private mortgage-secured loans and other debt. Note the term maturity expected and sources of repayment of all loans.

(a) Where there is both a construction loan and a permanent take-out loan, you must provide documentation of both, but only the value of the permanent loan will be counted as leverage.

(b) For privately financed homeownership construction loans, acceptable documentation of construction loans will be considered as leverage. Documentation of permanent financing is not required.

(c) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted as leverage.

(2) Insured loans.

(3) Donations and contributions.

(4) Housing trust funds.

(5) Net sales proceeds from a homeownership project. Downpayments from homebuyers may not be counted.

(6) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization Plan.

(7) Tax Increment Funding (TIF).

(8) Tax Exempt Bonds. Describe the use and term.

(9) Other Federal Funds. Other Federal sources may also include funds provided by HUD, except-public housing funds, such as HOPE VI Revitalization funds, HOPE VI Demolition funds, Capital Fund Program funds, and proposals to use operating subsidy for debt service. Though these HUD public housing funds may not be counted for points under this NOFA, they can be used as part of your revitalization plan.

(10) Sale of Land. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted.

(11) Donations of Land. Donations of land may be counted as a development resource, only if the donating entity owns the land to be donated. Donating entities may include a city, county, church, community organization, *etc.* The application must include documentation of this ownership, signed by the appropriate authorizing official.

(12) Low-Income Housing Tax Credits (LIHTC). Low-Income Tax Credits are authorized by section 42 of the IRS Code which allows investors to receive a credit against Federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households for a minimum period of years. There are two types of credits, both of which are available over a 10-year period: A 9 percent credit on construction/rehab costs, and a 4 percent credit on acquisition costs and all development costs financed partially with below-market Federal loans (*e.g.*, tax exempt bonds). Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm.* Only tax credits that have been reserved for the project will be counted as development leveraging.

(a) If you propose to include LIHTC equity as a development resource for your first phase of development, your application must include a LIHTC reservation letter from your state or local Housing Finance Agency. This letter must constitute a firm commitment and can only be conditioned on the receipt of the HOPE VI grant.

(b) If you propose to include LIHTC equity as a development resource for phases of development other than your first phase, your application must include a reservation letter from your state or local Housing Finance Agency in order to have the tax credit amounts for future phases counted as development leveraging.

(c) Only LIHTC commitments that have been secured as of the application deadline will be considered for the scoring under section VI(H)(1).

(E) Sources of Development Resources

You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort. Sources of resources that can be used for leveraging may include:

(1) Public, private, and non-profit entities, including LIHTC purchasers;

(2) State and local Housing Finance Agencies;

(3) Local governments;

(4) The city's housing and/or redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(a) You are strongly urged to seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to a PHA, a partnership, a non-profit organization, or other entity for revitalization activities, including loans to a project's for-profit partnership. More information about the CDBG Program can be found at *www.hud.gov/offices/cpd/index.cfm.*

(b) The city, county, or State may provide HOME funds to be used in conjunction with HOPE VI funds. The Home Investment Partnership Program provides housing funds that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. Current legislation allows HOME funds to be used in conjunction with HOPE VI funds, but they may not be used in conjunction with Public Housing Capital Funds under section 9(d) of the 1937 Act. Information about the HOME Program can be found at: *www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm.*

(5) Foundations.

(6) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac.

(7) HUD and other Federal agencies.

(8) Financial institutions, banks, or insurers.

(9) Other private funders.

(F) Types of CSS Resources

HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other resources to support CSS activities in order to ensure the successful transformation of the lives of residents and the sustainability of the revitalized public housing development. Leveraging scarce HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended.

Commitments of funding or in-kind services related to the provision of CSS activities may be counted as CSS resources and towards the calculation of CSS leverage. Types of resources that

may be counted include but are not limited to:

(a) Materials;

(b) A building;

(c) A lease on a building;

(d) Other infrastructure;

(e) Time and services contributed by volunteers;

(f) Staff salaries and benefits; and

(g) Supplies.

(h) See Section VIII(B) for other types of CSS resources.

Note that wages projected to be paid to residents through jobs, or projected benefits (*e.g.*, health/insurance/retirement benefits) related to those projected jobs, provided by CSS Partners will not be counted as leverage.

(G) Sources of CSS Resources

In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. You must actively enlist as partners other stakeholders who are vested in and can provide commitments of funds and in-kind services for the CSS portion of your revitalization effort. See Section VIII(C) for a list of the kinds of organizations, agencies, and other providers that may be used as sources of CSS resources.

(H) Rating Factor: Leveraging—16 Points Total

(1) *Development Leveraging—7 Points.* For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules.

(a) You will receive 7 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(b) You will receive 6 Points if the ratio is between 1:2.50 and 1:2.99.

(c) You will receive 5 Points if the ratio is between 1:2.0 and 1:2.49.

(d) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(e) You will receive 3 Points if the ratio is between 1:1.0 and 1:1.49.

(f) You will receive 2 Points if the ratio is between 1:0.50 and 1:0.99.

(g) You will receive 1 Point if the ratio is between 1:0.25 to 1:0.49.

(h) You will receive 0 Points if the ratio is less than 1:0.25, or there is inadequate information in your application to rate this factor.

(2) *CSS Leveraging—Amount of CSS Leveraged Resources—5 Points.* (a) You will receive 5 Points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:4 or higher. If no HOPE VI funds are requested for CSS activities because all CSS funds will come from outside sources, all adequately-documented funds from such outside sources will be counted and you will receive 5 Points.

(b) You will receive 4 Points if the ratio is between 1:3.5 and 1:3.99.

(c) You will receive 3 Points if the ratio is between 1:3 and 1:3.49.

(d) You will receive 2 Points if the ratio is between 1:2.5 and 1:2.99.

(e) You will receive 1 Point if the ratio is between 1:2 and 1:2.49.

(f) You will receive 0 Points if the ratio is less than 1:2, or there is inadequate information in your application to rate this factor.

(3) Anticipatory Resources Leveraging—2 Points. Anticipatory Resources relate to activities that have taken place in the past and that were conducted in direct relation to a HOPE VI Revitalization grant. In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource and cannot be counted towards match.

(a) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented anticipatory resources is 1:0.1 or higher.

(b) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented anticipatory resources is less than 1:0.1.

(4) *Collateral Investment Leveraging—2 Points.* Collateral Investment includes physical redevelopment activities that are currently underway, or that have yet to begin but are projected to be completed before October 2008. It must be demonstrated that these activities will directly enhance the new HOPE VI community, but will occur whether or not a Revitalization grant is awarded and the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI funds. These resources cannot duplicate any other type of resource and cannot be counted as match. The resources are subject to the same restrictions regarding documentation. Collateral investment resources are counted as leverage only and cannot be counted towards match. Examples of collateral investments include schools, libraries, subway or light rail stations, improved roads, day care facilities, and local medical facilities.

(a) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is 1:1.0 or higher.

(b) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is less than 1:1.0.

VII. Resident and Community Involvement

(A) Requirements and Thresholds

(1) General. You are required to involve residents and the broader community in the planning, proposed implementation, and management of your Revitalization Plan. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and/or additional outreach and involvement.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the Revitalization Plan and preparing the application.

(b) During the course of the three meetings, you must address the following issues listed below (*i.e.*, all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design, and

whether the unit design is in compliance with Fair Housing Act and UFAS standards;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases where temporary relocation is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) All training sessions and meetings must be held in facilities that are accessible to persons with disabilities, provide services such as day care, transportation, and sign language interpreters as appropriate, and as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) The training session and each of the public meetings must be held after the publication date of this NOFA in the **Federal Register**; any training sessions or public meetings held before the NOFA publication date will not be counted for the purposes of this competition.

Threshold: In your application you must provide a signed certification that the above resident training session and public meetings were held and that the topics listed above were covered. The certification must include the dates of the training session and meetings. If, after the deficiency cure period, this certification is not properly included in your application, the application will be ineligible for funding.

(B) Rating Factor: Resident and Community Involvement—3 Points

You will receive 1 Point for each of the following criteria met in your application, which are over and above the threshold requirements listed in Section (A) above.

(1) You demonstrate that you have communicated regularly and significantly with affected residents and members of the surrounding community about the development of your Revitalization Plan by giving residents and community members information about your actions regarding the Revitalization Plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the Revitalization Plan.

(2) You describe your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available (*i.e.*, a copy of the NOFA, computer access to the HUD Web site, etc.).

(3) You describe your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

VIII. Community and Supportive Services

(A) CSS Program Requirements

(1) Your CSS Team and Partners.

(a) The term ''CSS Team'' refers to PHA staff members and/or any consultants who will have the responsibility to design, implement, and manage your CSS Program.

(b) The term ''CSS Partners'' refers to the agencies and organizations that you will work with to provide supportive services for residents. A Partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local TANF agency that works with you to ensure that their services are coordinated and comprehensive.

(2) Maximum CSS grant amount. Consistent with section 24(j)(3) of the 1937 Act, you may use an amount up to 15 percent of the total HOPE VI Grant to pay the costs of CSS activities. You may spend additional sums on CSS activities using donations, other HUD funds made available for that purpose, or other PHA funds. See Section VI(A) of this NOFA for CSS grant matching requirements.

(3) CSS Endowment Trust. Consistent with section 24(d)(2) of the Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an Endowment Trust to provide CSS activities. In order to establish an Endowment Trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the Grant Agreement. When reviewing your request to set up an Endowment Trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the Endowment Trust to carry out those activities.

(4) Subgrant Agreements. You may enter into subgrant agreements with non-profit or State or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(5) Neighborhood Networks. All FY 2003 Revitalization grantees will be required to establish Neighborhood Networks Centers. This program provides residents with on-site access to computer and training resources. HUD will make technical assistance available to each PHA where needed. Grantees may use HOPE VI funds to establish Neighborhood Networks. In addition, $5 million will be made available for Neighborhood Networks in accordance with Section II(C) of the General Section of this NOFA. More information on the requirements of the Neighborhood Networks Center Program is available on the Neighborhood Networks Web site at *www.hud.gov/nnw/nnwindex.html*.

(6) CSS activities must be consistent with State and local welfare reform requirements and goals.

(7) The objectives of your CSS Program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(8) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or Housing Choice Voucher-assisted housing, residents who will relocate temporarily during the construction phase, and new residents of the revitalized units.

(9) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in Section (8) above.

(10) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including non-profit organizations, educational institutions, and State and local programs.

(11) CSS activities must be well integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(12) CSS programs and services must last for the life of the grant and must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(13) If selected, the Grantee is responsible for tracking and providing CSS programs and services to residents currently living on the targeted public

housing site and residents already relocated from the site. It is imperative that case management services begin immediately so that residents who will be relocated have time to participate in and benefit from CSS activities before leaving the site; and that residents who have already been relocated are able to participate in and benefit from CSS activities.

(B) CSS Activities May Include, But Are Not Limited To

(1) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(2) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or post-secondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(3) Readiness and retention activities, which frequently are key to securing private sector commitments to the provision of jobs.

(4) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(5) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program which has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized State agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(6) Life skills training on topics such as parenting, consumer education, and family budgeting.

(7) Creation and operation of credit unions to serve residents, including capitalization and technical assistance to foster new credit unions on-site and to encourage existing community credit unions to expand their coverage to include on-site coverage.

(8) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency Program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(9) Coordinating with health care services providers or providing on-site space for a health clinic, doctors, a wellness center, dentists, etc. that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(10) Substance/alcohol abuse treatment and counseling.

(11) Activities that address domestic violence treatment and prevention.

(12) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(13) Transportation, as necessary, to enable all family members to participate in available CSS activities and/or to commute to their places of employment.

(14) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

(C) CSS Partnerships and Resources

The following are the kinds of organizations and agencies that can provide you with in-kind, financial, and other types of resources necessary to carry out and sustain your CSS activities.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, non-profit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) TANF agencies/welfare departments.

(3) Job development organizations that link private sector or non-profit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, State charter schools, TANF, foundations, and private funding sources have been or could be established, such as:

(a) Youthbuild. HUD's Youthbuild Program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of Section 3, as described in Section X(D)(2)(a) of this NOFA. More information on HUD's Youthbuild Program can be found at *www.hud.gov/progdesc/youthb.cfm*.

(b) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort to meet the requirements of Section 3. More information can be found at *www.hud.gov/progdesc/stepup.cfm.*

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Non-profit organizations such as the Girl Scouts and the Urban League, both of which have Memoranda of Agreement (MOA) with HUD. Copies of these MOAs can be found on the Community and Supportive Services page of the HOPE VI Web site at *www.hud.gov/hopevi.*

(11) Civil rights and fair housing organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Non-profit organizations such as grassroots faith-based and other community-based organizations. HUD encourages you to partner or subgrant with non-profit organizations, including grassroots faith-based and other community-based organizations, to provide CSS activities. Such organizations have a strong history of providing vital community services such as job training, childcare,

relocation supportive services, youth programs, technology training, transportation, substance abuse programs, crime prevention, health services, assistance to the homeless and homelessness prevention, counseling individuals and families on fair housing rights, providing elderly housing opportunities, and homeownership and rental housing opportunities in the neighborhood of their choice. HUD believes that grassroots organizations, *e.g.* civic organizations, faith-communities, national and local self-help homeownership organizations, faith-based, and other community-based organizations should be more effectively used, and has placed a high priority on expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. See HUD's Center for Faith-Based and Community Initiatives Web site at *www.hud.gov/offices/fbci/index.cfm.*

(a) HUD will consider an organization a ''grassroots'' organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.''

(D) Rating Factor: CSS Program—6 Points Total

In your application you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

(1) You will receive 2 Points if you demonstrate that you will be able to provide case management within 30 days from the date of grant award execution so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(2) You will receive 2 Points if you have proposed a high quality, results-oriented CSS program that is based on a comprehensive case management system and enables residents affected by the revitalization plan to access, at a minimum, basic elements of education, job training, and other services that will assist them in transforming their lives and becoming self-sufficient.

(3) You will receive 1 Point if you provide letters from a variety of experienced organizations and service providers that represent strong relationships and commitments to participate in your CSS activities and accomplish your CSS goals of the program.

(4) You will receive 1 Point if your CSS Program has been developed in response to a rigorous resident needs identification process and directly responds to the identified needs.

IX. Relocation

(A) Definition

You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your Revitalization Plan. Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and the implementing government-wide regulation at 49 CFR part 24, and CPD Notice 02–08, Guidance on the Applications of the URA and Real Property Acquisition Policies Act of 1970, as amended, in HOPE VI Projects. The relocation requirements of the URA and the government-wide regulations, as well as CPD Notice 02–08, cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(B) Relocation Guidelines

(1) The HOPE VI Relocation Plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing.

(2) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations, and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(3) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(C) Standard Relocation Requirements

You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(1) Relocation or temporary relocation carried out as a result of rehabilitation under an approved Revitalization Plan is subject to the URA, the URA regulations at 24 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(2) Relocation carried out as a result of acquisition under an approved Revitalization Plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(3) Relocation carried out as a result of disposition under an approved Revitalization Plan is subject to Section 18 of the 1937 Act, as amended.

(4) Relocation carried out as a result of demolition under an approved Revitalization plan is subject to the URA regulations at 24 CFR part 24.

(D) Threshold: The HOPE VI Revitalization Relocation Plan.

Each applicant must complete a HOPE VI Relocation Plan. In your application, you must submit a certification that the HOPE VI Relocation Plan has been completed and that it conforms to the URA requirements as described in Section IX(C) above. If relocation was completed as of the application deadline (*i.e.*, the targeted public housing site is vacant), this threshold will be deemed to be satisfied. Rather than providing a certification that the HOPE VI Relocation Plan has been completed, a certification that the relocation was completed must be included in the application. This certification may be provided in the form of a letter.

(E) Rating Factor: Relocation—5 Points Total

(1) You will receive 5 Points if you provide a certification that all of the residents of the targeted severely distressed public housing project have been relocated and tracked as of the HOPE VI Revitalization application due date. All residents must have been tracked in order to receive these 5 points. If you qualify for these 5 Points,

you are not eligible for any additional Points described below.

(2) You will receive 4 Points if you:

(a) Provide a certification that all of the residents of the targeted severely distressed public housing project have been relocated but you were unable to track all residents, as of the HOPE VI Revitalization application due date. You must describe the efforts undertaken to track residents and reasons why all residents were not tracked; or

(b) Describe in your application:

(i) An effective plan to track residents who have been or will be relocated from the targeted project; and

(ii) A comprehensive plan that will provide mobility counseling and direct assistance in locating housing to residents who choose Housing Choice Voucher assistance that will help them to fully understand the full range of housing opportunities available to them in neighborhoods throughout the jurisdiction and to find housing in non-poverty areas. You must provide a list of available units to persons with disabilities as required under 24 CFR 8.28(a)(3).

(3) You will receive 2 Points if you meet only one of the factors described in Section (2)(b) above.

(4) You will receive 0 Points if your application does not meet either of the factors described in Section (2)(b) above, or if there is inadequate information in the application to rate this factor.

X. Fair Housing and Equal Opportunity

(A) Housing and Services for Persons With Disabilities

(1) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several Federal laws. All applicable laws must be read together and followed. PIH Notice 2002–1, available at *http://www.hud.gov/offices/pih/publications/notices/02/pih2002–1.pdf*, and subsequent updates, provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. All HOPE VI multifamily housing projects, whether they involve new construction and/or rehabilitation, are subject to the section 504 accessibility requirements described in 24 CFR part 8. See in particular, 24 CFR 8.20–8.24. In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. The relevant accessibility requirements are provided in HUD's FHEO Web site at *www.hud.gov/groups/fairhousing.cfm.*

(2) Specific Fair Housing requirements are:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(b) The prohibitions against discrimination on the basis of disability, including requirements that multifamily housing projects comply with the Uniform Federal Accessibility Standards, and that you make reasonable accommodations to individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 35.

(d) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(B) Rating Factor: FHEO Disability Issues 4 Points Total

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed above, you will receive 2 Points if you describe a detailed plan to:

(i) Provide accessibility in homeownership units (*e.g.*, setting a goal of constructing a percentage of the homeownership units as accessible units for persons with mobility impairments; promising to work with prospective disabled buyers on modifications to be carried out at a buyer's request; exploring design alternatives that result in townhouses that are accessible to persons with disabilities);

(ii) Provide one-bedroom accessible rental units for single individuals with disabilities;

(iii) Provide for accessibility modifications, where necessary, to Housing Choice Voucher-assisted units of residents who relocate from the targeted project to private or other public housing due to revitalization activities. The Department has determined that the costs of such modifications are eligible costs under the HOPE VI program;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive 1 Point if your application describes a detailed plan to implement some of the accessibility priorities stated above, explaining why and how you will implement the identified accessibility priorities. (c) You will receive 0 Points if you fail to provide a description that meets the specifications above, or if there is inadequate information in your application to rate this factor.

(2) Universal Design—2 Points.

(a) You will receive 2 Points if you specifically describe:

(i) A plan to meet the adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, the wiring for visible emergency alarms may be installed so that a unit can be made ready for occupancy by a hearing-impaired person (For information on adaptability, see *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf*); and

(ii) A plan to meet the visitability standards recommended by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(i) At least one entrance at grade (no steps), approached by a sidewalk; and

(ii) The entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive 0 Points if your application does not adequately describe plans for (i) and (ii) as specified above, or if there is inadequate information in your application to rate this factor.

(C) Fair Housing and Civil Rights Compliance

(1) *Threshold:* Compliance with Fair Housing and Civil Rights Laws. HUD will not consider your application for funding unless it complies with the threshold requirement described in Section V(A) of the General Section of this NOFA.

(2) *Threshold:* Desegregation Orders. HUD will not consider your application for funding unless it complies with the

threshold requirement described in Section V(B) of the General Section of this NOFA.

(3) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 (b–d) or with the standards outlined below.

(a) HOPE VI Goals Related to Site and Neighborhood Standards. You are expected to ensure that your revitalization plan will expand assisted housing opportunities in non-poor and non-minority neighborhoods and/or will accomplish substantial revitalization in the Project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that households of all races and ethnicity, or with disabilities, can freely decide the type of neighborhood where they wish to reside, that minority neighborhoods are no longer deprived of essential public and private resources, and that stable, racially-mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Compliance with Fair Housing Act and Title VI of the Civil Rights Act of 1964. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations, in determining the location of any replacement housing.

(d) Grantee's Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this Section.

(e) Replacement housing located on site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside of the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development), HOPE VI replacement housing not covered by Section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration, or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the Revitalization Plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficits in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term ''area of minority concentration'' is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 points higher than the percentage of that particular minority group for the housing market area; *i.e.*, the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located; or

(ii) The neighborhood's total percentage minority is at least 20 points higher than the total percentage of all minorities for the MSA as a whole; or.

(iii) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(4) Affirmatively Furthering Fair Housing. Section 808(e)(5) of the Fair Housing Act requires HUD to affirmatively further fair housing. HUD requires the same of its grant recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes are:

(a) Race;
(b) Color;
(c) National origin;
(d) Religion;
(e) Sex;
(f) Disability; and
(g) Familial status.

(D) Rating Factor: Fair Housing and Section 3—3 Points Total

(1) Fair Housing—2 Points.

(a) You will receive 2 Points if your application specifically describes:

(i) Your efforts to attract families from all segments of the population on a non-discriminatory basis and with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) Your efforts to target your marketing and outreach activities to those persons and groups least likely to know about these housing opportunities, in order to promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(A) Addressing impediments to fair housing choice relating to your operations;

(B) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(C) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA;

(D) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(E) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive 1 Point if you address all of the above issues only in a general way.

(c) You will receive 0 Points if you do not address all of the above issues, or if there is insufficient information to rate this factor.

(2) Economic Opportunities for Low- and Very Low-Income Persons (Section 3)—1 Point.

(a) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about Section 3 can be found at HUD's section 3 Web site at *www.hud.gov/fhe/sec3over.html.*

(b) You will receive 1 Point if you describe a feasible plan to implement Section 3 that not only meets the minimum requirements described in Section (a) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment and other economic opportunities to:

(i) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(ii) Business concerns which provide economic opportunities to low- and very low-income persons.

(c) You will receive 0 Points if your plan to implement Section 3 does not meet the standards listed in Section (b) above, or if there is inadequate information in your application to rate this factor.

XI. Well-Functioning Communities—8 Points Total

(A) Rating Factor: On-Site Housing—3 Points

Your proposed unit mix must be designed to achieve a well functioning community on the revitalized site. While it is up to you to determine the unit mix that is appropriate for your site, it is essential that this unit mix include a sufficient amount of public housing rental units. Reducing concentration in this context does not necessarily mean reducing density of housing units; a well-functioning, mixed-income housing community may actually have a higher density of units, but with a unit mix appropriate for the site's market conditions. For purposes of this section, ''public housing rental units'' mean rental units under the ACC. Homeownership units and lease-purchase units would not be counted. Units sold under section 32 are not considered as public housing rental units for this section.

(1) You will receive 3 Points if your application describes a unit mix that is more than 35 percent or more public housing rental units.

(2) You will receive 2 Points if your application describes a unit mix that is between 25 and 34 percent public housing rental units.

(3) You will receive 1 Point if your application describes a unit mix that is between 15 and 24 percent public housing rental units.

(4) You will receive 0 Points if your application describes a unit mix that is 14 percent or less, or if there is inadequate information in your application to rate this factor.

(B) Off-Site Housing—1 Point

(1) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (*i.e.*, off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and/or low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and assist the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(2) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization Plan, you are not eligible to receive this Point.

(3) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (*e.g.* on-site housing, homeownership housing, etc.). Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(4) *Threshold:* If you propose to develop off-site housing in any phase of your proposed revitalization plan, you MUST provide evidence in your application that you (not your developer) have site control of the property(ies). Evidence may include an option to purchase the property, a sales agreement, a land swap, or a deed. Evidence may not include a letter from the Mayor or other official, letters of support from members of the appropriate municipal entities, or a resolution evidencing the PHA's intent to exercise its power of eminent domain. Evidence of site control may only be made contingent upon the receipt of the HOPE VI grant, satisfactory compliance with the environmental review requirements in accordance with Section XVII of this NOFA, and the site and neighborhood standards in Section X(C)(3) of this NOFA. If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application due date. If you propose to develop off-site housing and you do not provide acceptable site control, your entire application will be ineligible for funding.

(5) *Rating factor.* You will receive 1 Point if you propose to develop an off-site housing component(s) and document that: you have site control of the property(ies), that the site(s) meets all environmental review requirements, and that the site(s) meets site and neighborhood standards, in accordance with (4) above.

(C) Threshold: Market Rate Housing

If you include market rate housing in your Revitalization Plan, you must demonstrate that there is a demand for the housing units of the type, number, and size proposed in the location you have chosen. In your application you must provide a preliminary market assessment letter prepared by an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units and any community facilities, economic development, and retail structures, based on the market and economic conditions of the project area. If, after the cure period, this letter is not included in your application, it will be ineligible for funding.

(D) Rating Factor: Homeownership Housing—4 Points

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a

second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 4 Points if you propose and describe a feasible, well-defined plan for homeownership. In your application, you will describe all of the following:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you will provide to prospective families, including such subjects as the homeownership process, housing in non-impacted areas, credit repair, budgeting, and home maintenance.

(2) You will receive 2 Points for this factor if you address in your description some but not all of the items listed under (1).

(3) You will receive 0 Points for this factor if you do not propose to include homeownership units in your Revitalization Plan, your proposed program is not feasible and/or well defined, or there is inadequate information in your application to rate this factor.

(E) Threshold: Zoning Approval

If you are proposing to use off-site parcels of land for housing development or other uses that are currently zoned for a purpose different than the one proposed in your revitalization plan, your application must include a certification from the appropriate local official documenting that all required zoning approvals have been secured for such parcels, and/or the actual zoning approval document for the parcel(s). For example, if you propose to develop housing on land that is currently zoned as parkland or industrial land, you must provide evidence in the application that the zoning change has been secured to permit housing development.

XII. Soundness of Approach

(A) Threshold: Appropriateness of Proposal

In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal and explain why your plan is more appropriate. This is a statutory requirement and an application threshold. Any deficiencies in your narrative may not be corrected after the application is submitted. Examples of alternative proposals may include:

(1) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(2) Proposing a range of incomes, housing types (rental, homeownership, market rate, public housing, townhouse, detached house, etc.), or costs which cannot be supported by a market analysis; and/or

(3) Proposing to use the land in a manner that is contrary to the goals of your agency.

(B) Rating factor: Overall Quality of Plan—19 Points Total

(1) Quality and Consistency of the Application—2 Points.

Your application may receive between 0 and 2 points for its demonstration of quality and consistency. The information and strategies described in your application must be well organized, coherent, and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

—Types and numbers of units;
—Budgets;
—Other financial estimates, including sources and uses; and
—Numbers of residents affected.

(a) You will receive 2 points if your application demonstrates a high level of quality and consistency;

(b) You will receive 1 point if your application demonstrates a moderate level of quality and consistency;

(c) You will receive 0 points if your application fails to demonstrate an acceptable level of quality and consistency;

(2) *Appropriateness and Feasibility of the Plan—2 Points.* (a) You will receive 2 points if your Revitalization Plan demonstrates:

(i) Appropriateness and suitability, in the context of the community, market conditions, and other revitalization options, in accordance with XII(A);

(ii) Marketability, in the context of local conditions;

(iii) Financial feasibility, as demonstrated in the financial structure(s) proposed in the application.

(b) You will receive 1 Point if your application only moderately demonstrates the criteria of (2)(a)(i)–(iii) above.

(c) You will receive 0 Points if your application does not demonstrate the criteria of (2)(a)(i)–(iii) above.

(3) *Neighborhood Impact and Sustainability of the Plan—2 Points.* (a) You will receive 2 Points if your Revitalization Plan, including plans for retail, office, other economic development activities, as appropriate, will:

(i) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(ii) Spur outside investment into the surrounding community;

(iii) Enhance economic opportunities for residents; and

(iv) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(b) You will receive 1 Point if your application demonstrates that your Revitalization Plan will have only a moderate effect on activities in the surrounding community, as described in (a)(i)–(iv) above.

(c) You will receive 0 Points if your application does not demonstrate that your Revitalization Plan will have an effect on the surrounding community, as described in (a)(i)–(iv) above, or if there is inadequate information in your application to rate this factor.

(4) *Project Readiness—7 Points.* HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(a) You will receive 2 Points if the targeted severely distressed public housing project is completely vacant.

(b) You will receive 2 Points if the targeted severely distressed public housing site is cleared.

(c) You will receive 1 Point if a Master Development Agreement has been developed and is ready to submit to HUD.

(d) You will receive 1 Point if your preliminary site design is complete.

(e) You will receive 1 Point if you have held 5 or more public planning sessions leading to resident acceptance of the Plan.

(5) *Design—3 Points.* HUD is seeking excellence in design. We urge you to carefully select your architects and/or planners, and to enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American

Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and/or the department of architecture at a local college or university to assist you in assessing qualifications of design professionals and/or participating on a selection panel that results in the procurement of excellent design services.

HUD encourages you to select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your Team who have the ability to meet these requirements.

(a) You will receive 3 Points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(i) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(ii) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(iii) Your plan proposes appropriate enhancements of the natural environment.

(b) You will receive 1 Point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses the elements above.

(c) You will receive 0 Points if your proposed design is perfunctory or otherwise does not address the above elements. You will also receive 0 Points if there is inadequate information in the application to rate this factor.

(6) *Evaluation—3 Points.* You are encouraged to work with your local university(ies), other institutions of learning, foundations, and/or others to evaluate the performance and impact of their HOPE VI Revitalization Plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HSIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(a) You will receive 3 Points if your application includes a letter(s) from an institution(s) of higher learning, foundations, or other organization that specializes in research and evaluation that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address all of the following areas for evaluation:

(i) The impact of your HOPE VI effort on the lives of the residents;

(ii) The nature and extent of economic development generated in the community;

(iii) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(iv) Your success at integrating the physical and CSS aspects of your strategy.

(b) You will receive 0 Points if your application does not include a commitment letter that conforms to the specifications in paragraph (b) above.

XIII. Application Requirements

(A) Application Components

(1) *Narrative Exhibits.* (a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including but not limited to relocation, community and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 100 pages of narrative exhibits. Any pages after the first 100 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 100 page limit.

(2) *Attachments.* (a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, and various certifications unique to HOPE VI Revitalization.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of attachments. Any pages after the first 125 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) *Exceptions to Page Limits.* The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1)(b) and (2)(b) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from resource providers or CSS providers.

(c) Attachments that provide documentation of site control and site acquisition in accordance with Section XI(B)(4) and (5).

(d) Narratives and Attachments, as relevant, required to be submitted only by existing HOPE VI Revitalization Grantees in accordance with Sections IV(A)(3) and IV(B)(2) of this NOFA (Capacity).

(e) Information required of MTW applicants only.

(4) *Standard Forms and Certifications.* The last part of your application will be comprised of standard certifications common to many HUD programs. Required forms are included in the HOPE VI Application and will be available electronically on the Web sites listed in Section III(D)(2) in the General Section of this NOFA. If you are requesting Housing Choice Voucher assistance as described in Section III(E) in the General Section of this NOFA, it must be placed in this Standard Forms and Certifications Section of your HOPE VI application. These forms must be placed at the back of the application, except for the Application for Federal Assistance (SF–

424) and the Acknowledgment of Application Receipt (HUD–2993), must be the first two pages of your application.

(B) Application Format

To speed the processing of your application, you are asked to follow these instructions when preparing your application:

(1) Double space your narrative pages. Single spaced pages will be counted as two pages.

(2) Use 8½ x 11 inch paper, one side only. Only the City map may be submitted on an 8½ by 14 sheet of paper. Larger pages will be counted as two pages.

(3) All margins should be 1 inch, but no smaller than ½ inch.

(4) Use at least an 11 Point font.

(5) Any pages marked with numbers and letters (*e.g.*, 75A, 75B, 75C) will be treated as separate pages.

(6) If a Section is not applicable, omit it; do not insert a page marked n/a.

(7) Mark each Exhibit and Attachment with an appropriate tab. No material on the tab will be considered for review purposes, although pictures are allowed.

(8) No more than one page of text may be placed on one sheet of paper; *i.e.*, you may not shrink pages to get two or more on a page.

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages.

(10) The applications (copy and original) should be packaged in a 3-ring binder.

(C) Signatures

Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designate, must sign each form or certification, whether part of an Attachment or a Standard Certification. Signatures need not be original in the copy.

XIV. Revitalization Application Selection Process

(A) Revitalization Grant Application Evaluation

(1) HUD's selection process is designed to ensure that HOPE VI Revitalization grants are awarded to eligible PHAs with the most meritorious applications.

(2) HUD will only rate HOPE VI Revitalization applications that have met the thresholds described in this HOPE VI NOFA.

(B) Threshold and Completeness Review

(1) Application Screening. HUD will screen each application to determine if it meets the threshold criteria listed in Section II of this NOFA.

(2) HUD will consider the information you submit by the application due date. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

(3) In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application on a uniform basis for all applicants. After your application has been screened, HUD may contact you to clarify an item in your application or to give you an opportunity to correct a technical deficiency. HUD may not seek clarification of items or responses that would improve the substantive quality of your response to any rating factor. Examples of curable technical deficiencies include your failure to include a required certification or sign a document. If HUD identifies a technical deficiency, it will notify you by fax of the clarification or deficiency. You must submit information to cure the deficiency to HUD within 14 calendar days from the date of HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the following business day.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(4) In order to evaluate Thresholds, HUD may also use internal information sources that will provide information regarding audit findings, the status of existing HOPE VI Revitalization grants obligation of Capital Funds, and other pertinent information. HUD will not consider external sources such as newspaper articles and letters to evaluate applications unless they are submitted in your application.

(5) Applications that do not meet every threshold will be deemed ineligible for funding and will not be rated.

(C) Preliminary Rating and Ranking

(1) Rating.

(a) HUD will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in this HOPE VI NOFA.

(b) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(c) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(d) The maximum number of Points for each Revitalization application is 108.

(2) Ranking.

(a) After preliminary review, applications will be ranked in score order.

(b) Applications will be deemed ''competitive'' if they have a preliminary score of 85 or above.

(c) Applications that do not have a preliminary score of at least 85 will not receive a final score and will not be eligible for funding.

(D) Final Panel Review

(1) A Final Review Panel made up of HUD staff will:

(a) Assess each competitive application, as defined in Section XIV(C) above;

(b) Assign the final score; and

(c) Recommend for selection the most highly-rated competitive applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of the General Section of this NOFA.

(2) HUD reserves the right to make reductions in funding to delete ineligible items, with the exception of the prohibition to request funds for units that do not meet the requirements of replacement housing, in accordance with Section III(D)(8) of this NOFA.

(3) In accordance with the FY 2003 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

(E) Tie Scores

If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for Rating Factor XII, Overall Quality of the Plan. If a tie still remains, HUD will select for funding the application(s) with the highest score for Capacity, Rating Factor IV. HUD will select further tied applications with the highest score for Need, Rating Factor V.

(F) Transfer to Demolition Grants

If funds remain after all eligible HOPE VI Revitalization grant applications are funded and the amount remaining is inadequate to feasibly fund the next eligible Revitalization application, HUD reserves the right to:

(1) Reallocate unused funds to fund or supplement the next eligible HOPE VI Demolition grant application(s);

(2) Reallocate unused funds to the amount available for Housing Choice Voucher assistance, if necessary; and/or

(3) Carry over unused funds to the next fiscal year.

XV. Post Award Activities

(A) Notification of Funding Decisions. The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a Revitalization grant until it has announced all HOPE VI Revitalization grant recipients. If your Revitalization application has been found to be ineligible or if it did not receive enough Points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

(B) Applicant Debriefing. Each applicant will be provided a copy of the total score their application received, including the score received for each rating factor.

(C) Environmental Review. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with Section XVII of this NOFA.

(D) Revitalization Grant Agreement. When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the Grant Agreement. It is effective on the date of HUD's signature. The Grant Agreement differs from year to year. Past Revitalization Grant Agreements can be found on the HOPE VI Web site at *www.hud.gov/hopevi*.

(E) HOPE VI Endowment Trust Addendum to the Grant Agreement. This document must be executed between the Grantee and HUD in order for the Grantee to use CSS funds in accordance with Section VIII(A)(3) of this NOFA.

(F) Revitalization Plan. After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your Revitalization Plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

(1) Supplemental Submissions, including a HOPE VI Program Budget;

(2) A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

(3) A standard or mixed-finance development proposal, as applicable;

(4) A demolition and/or disposition application, as applicable; and

(5) A homeownership proposal, as applicable.

XVI. Revitalization Grant Implementation Requirements

(A) General Section Requirements. See the General Section of this NOFA for other Grant Implementation and Additional Governmental Requirements that you must implement.

(B) Quarterly Report. If you are selected for funding, you must submit a Quarterly Report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of Quarterly Reports.

(2) Filing of Quarterly Reports is mandatory for all Grantees, and failure to do so within the required time frame will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS, or its successor system, on a quarterly basis.

(C) Timeliness of Construction. Grantees must proceed within a reasonable time frame, as indicated below. In determining reasonableness of such time frame, HUD will take into consideration those delays caused by factors beyond your control. These timeframes must be reflected in the form of a program schedule, in accordance with the threshold requirement at Section IV(C).

(1) Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

(2) Grantees must submit CSS work plans within 90 days from the execution of the Grant Agreement.

(3) All other required components of the Revitalization Plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

(5) Grantees must submit the development proposal for the first phase of construction within 12 months of grant award. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

(6) The closing of the first phase must take place within 15 months of grant award.

(7) Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

(8) In accordance with section 24(i) of the 1937 Act, if a Grantee does not proceed within a reasonable time frame, as described in Sections (B)(1) through (7) above, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization Plan of the original Grantee.

(9) 31 U.S.C. 1552. In accordance with this statute, all FY 2003 HOPE VI funds must be expended by September 30, 2009. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

(D) Building Standards. (1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to read the policy statement and Final Report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD Web site at *www.hud.gov/fhe/modelcodes*.

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or ''deconstruction'' of public housing units, recycling demolition debris, and reusing salvage materials in new construction. ''A Guide to Deconstruction'' can be found at *www.hud.gov/deconstr.pdf.*

(3) PATH. HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH (Partnership for Advancing Technology in Housing) is a voluntary initiative that seeks to accelerate the creation and widespread use of

advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our Nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, the list of technologies, latest PATH Newsletter, results from field demonstrations, and PATH projects can be found at *www.pathnet.org.*

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(f) HUD's Energy Web site is located at *http://www.hudstage.hud.gov/offices/cpd/energyenviron/energy/index.cfm*

(E) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, e-mail, and web pages) facsimile machines, copiers, and telephones. When developing, procuring, maintaining or using EIT, grantees must ensure that the EIT allows:

(1) Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

(2) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data that is comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose an undue burden on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

XVII. Environmental Requirements

(A) Environmental Review. (1) Environmental Review Requirements for the HOPE VI Program. Please see Section VII of the General Section of the NOFA for environmental review requirements for HOPE VI Grants.

(2) Additional Environmental Review Requirements for HOPE VI Revitalization Grants. (a) If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your Request for Release of Funds (RROF), the Supplemental Submissions approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If HUD does not approve the remediation plan and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(b) If the environmental review is not completed and/or you have not submitted the RROF before HUD approval of the Supplemental Submissions, the letter approving the Supplemental Submissions will instruct you to refrain from undertaking, obligating, or expending funds on physical activities or other choice-limiting actions, until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The Supplemental Submissions approval letter also will advise you that the approved Supplemental Submissions may be modified on the basis of the results of the environmental review.

(B) There must not be any environmental or public policy factors such as sewer moratoriums that would preclude development in the requested locality. Applicants will certify to this when signing the HOPE VI Revitalization Grant Application Certifications.

(C) Flood Insurance. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

(D) Coastal Barrier Resources Act. In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

A

HOPE VI Revitalization Grant Applicant Certifications

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application, of which this document is a part, and make the following certifications to and

agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with section 24(j)(2) of the United States Housing Act of 1937 (''1937 Act'').

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a payback plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501).

If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the federal government, state, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of the HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.11 2(b), (d), (e), and (g)–(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

(e) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations at 24 CFR part 1.

(f) Executive Order 11063, issued November 20, 1962.

(g) The Age Discrimination Act of 1975 and the regulations at 24 CFR part 146.

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); section 18 of the 1937 Act as amended (disposition); and CPD Notice 02–08.

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A–87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

HOPE VI Demolition Grants Section

The Demolition Grants Section of the HOPE VI NOFA contains information that applies to the HOPE VI Demolition Program. Unless otherwise noted, citations refer to the HOPE VI Demolition Grants Section.

I. Application Thresholds

(A) Each required element of a HOPE VI Demolition grant application is a threshold requirement. Your application will not be eligible for funding unless each requirement listed in this NOFA is included in your application. HUD will give you the opportunity to submit any missing information up to the application deadline date, as provided in Section III(B) of the General Section.

II. Eligible Demolition Activities

(A) Relocation for residents displaced as a result of the demolition of the project. This includes reasonable moving expenses as well as mobility counseling and other services to help displaced residents relocate. See Section V of this NOFA for relocation requirements.

(B) Demolition of dwelling units in buildings, in whole or in part, including the abatement of environmentally hazardous materials such as asbestos, in accordance with section 18 of the 1937 Act as amended.

(C) Demolition of nondwelling structures, if such demolition is directly related to the demolition of severely distressed dwelling units to be demolished with funds from the HOPE VI Demolition Grant.

(D) Restoration of the site to a ''greenfield,'' a clean site by removing all demolished materials, filling in the site, and establishing a lawn. No additional improvements, such as constructing new curbs and gutters, installing playground equipment, installing permanent fences, or planting gardens, may be paid for with HOPE VI Demolition grant funds.

(E) In the case of partial demolition of a site, minimal site restoration after demolition and subsequent site improvements to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

(F) Reasonable costs for administration, planning, technical assistance, and fees and costs that are deemed to be incremental costs of carrying out the demolition as specifically approved by HUD.

III. Application and Grant Limitations

(A) *Application Limitations.* (1) You may submit up to ten HOPE VI Demolition grant applications that target a total of no more than 2,500 severely distressed public housing units.

(2) You may target units in only one public housing project (i.e., units that have the same project number) per application.

(3) You may submit more than one application targeting units in a single housing project.

(4) You may target as many or as few units per application as you wish, up to the overall 2,500 unit maximum.

(B) *Grant Limitations.* (1) *Demolition.* You may request up to $6,000 per unit for demolition and other eligible related costs. Demolition of streets, sidewalks, curbs, gutters, and driveways; removal of underground storage tanks and sewer lines; capping of utilities; restoration of the site; abatement of environmentally hazardous materials; and costs for administration, planning, technical assistance, fees, and permits are to be included in this figure.

(2) *Relocation.* You may request up to $3,000 in relocation costs for each unit that is occupied as of the date you submit your HOPE VI Demolition grant application.

(3) *Nondwelling Structures.*

(a) You may request reasonable amounts to pay for the demolition of significant nondwelling structures related to the demolition of dwelling units. These costs must be included as part of an application for funding of demolition of public housing units; you may not apply for them separately. Examples of such structures include community centers, heating plants, playgrounds, and management offices. These facilities must be under the Annual Contributions Contract.

(b) Such costs must be justified and verified by an engineer or architect licensed by his or her State licensing board who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and State of registration. A Nondwelling Structures Cost Certification is included in the HOPE VI Demolition Grant Application.

(C) HUD recognizes that the HOPE VI grant may not cover the total costs of relocation, abatement, demolition, and site restoration in all cases and that you may have to provide additional funding from other sources.

(D) You may not use HOPE VI Demolition Grant funds to pay for any demolition or related activities carried out before the date of the letter announcing the award of the HOPE VI Demolition Grant.

IV. Statutory Requirements

(A) *Severe Distress.* In accordance with Section IV of the General Section of this NOFA, the targeted public housing project or building in a project must be severely distressed.

(1) *Demonstration of Severe Distress.* Units will be considered severely distressed if:

(a) They are included in a HUD-approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date;

(b)(i) They are included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

(ii) They are, in HUD's sole determination under section 537(c) of QHWRA, subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section VII(B) of this NOFA; or

(c) They are included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended (''section 18 demolition application'').

(B) *Separability.* In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only individual buildings of a project for demolition, you must:

(1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separated from the remainder of the project of which the building is part to make demolition of the building feasible, and

(2) Demonstrate that the plan for the demolished portion will provide defensible space for the occupants of the remaining building(s). Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

(C) *Appropriateness of Proposal.* In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your

proposal, and explain why your plan is more appropriate.

V. Relocation

(A) *General.* You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of demolition activities. CPD Notice 02–08, entitled ''Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), as Amended, in HOPE VI Projects,'' outlines the URA requirements and describes the framework for operating its relocation assistance activities connected with HOPE VI revitalization and demolition activities. Applicants should use this document as a guide for formulating and implementing their HOPE VI Relocation Plans.

(B) *Standard Relocation Requirements.* You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(1) Relocation as a result of demolition approved by a section 18 demolition application is subject to section 18 of the 1937 Act.

(2) Relocation as a result of demolition approved as part of a Section 202 Mandatory Conversion Plan is subject to the URA.

(C) *Relocation Guidelines.* (1) Each applicant requesting funds for relocation must first complete, as a condition for receipt of HOPE VI Demolition Grant funds, a HOPE VI Relocation Plan. You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(2) No relocation costs incurred before the award of the HOPE VI Grant may be reimbursed.

VI. HOPE VI Demolition Grant Application Selection Process

(A) *HOPE VI Demolition Grant Funding Categories.* HUD will select HOPE VI Demolition grant applications on a first-come, first-served basis, by an application's Priority Group and Ordinal. HOPE VI Demolition grant applications are not rated.

(1) *Eligible Units.* Severely distressed public housing units to be demolished with HOPE VI Demolition grant funds must meet one of the criteria in the description of priority groups below. Units identified for demolition in a previously awarded HOPE VI Revitalization grant are not eligible to apply for HOPE VI Demolition funding under this NOFA.

(2) *Priority Groups.* You must identify each HOPE VI Demolition grant application by its appropriate Priority Group, as described below. Each application must target units of a single Priority Group; *e.g.*, do not include Priority Group 1 units in the same application as Priority Group 2 units.

(a) *Priority Group 1.* Priority Group 1 applications target units included in an approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date.

(b) *Priority Group 2.*

(i) Priority Group 2 applications:

a. Target units included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

b. Target units that, in HUD's sole determination under section 537(c) of QHWRA, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section VII(B) of this NOFA.

(ii) If you submit a HOPE VI Demolition grant application for units that are targeted in a Section 202 Mandatory Conversion Plan that was submitted under 24 CFR part 971 but not yet approved (Priority Group 2), and HUD subsequently approves the Conversion Plan before the HOPE VI Demolition grant application deadline date, you may revise your application and it will be reclassified as Priority Group 1. HUD will change the original Ordinal to the Ordinal corresponding to the date that the revision was received.

(iii) If you submit a Section 202 Mandatory Conversion Plan but HUD determines that the targeted project does not qualify for conversion under 24 CFR part 971, your HOPE VI Demolition grant application will not be eligible for funding. If you intend to submit a Priority 1 or 2 application, discuss the project with your Field Office to ensure that it qualifies under the standards of 24 CFR part 971.

(c) *Priority Group 3.* Priority Group 3 applications target units that are included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended (''section 18 demolition application'').

(i) HUD must approve your section 18 demolition application on or before the HOPE VI Demolition grant application deadline. You are advised that in order to allow for sufficient time for a new section 18 demolition application to be processed, you should submit your section 18 demolition application to HUD's Special Applications Center (SAC) no later than November 10, 2003. If your section 18 demolition application does not meet the statutory requirements of section 18, including the requirement for HUD Field Office approval of the Interim or PHA Plan as required by 24 CFR part 903, HUD will not approve the section 18 demolition application and your HOPE VI Demolition grant application will not be eligible for funding.

(ii) If you have submitted a section 18 demolition application to the HUD Special Applications Center but it has not yet been approved by HUD when you submit your HOPE VI Demolition grant application, your HOPE VI application will not be considered complete and you will not receive a final Ordinal unless and until your section 18 demolition application is *approved* on or before the HOPE VI Demolition Grant Application deadline.

(iii) If your section 18 demolition application is approved by HUD on February 17, 2004, or February 18, 2004, only, you are not required to submit your approval letter to HUD, and HUD will deem the approval letter to have been submitted in the application. In such a case, if your application is otherwise complete, your Ordinal will be the date that HUD approves your section 18 demolition application.

(iv) If HUD has previously approved your section 18 demolition application but HUD later rescinded the approval, your section 18 demolition application will not be considered approved by HUD, and your HOPE VI Demolition grant application will not be eligible for funding.

(B) *Ordinals.* Upon receipt, HUD will assign each HOPE VI Demolition grant application an Ordinal (*i.e.*, ranking number) that reflects the date HUD Headquarters received the application. Ordinals correspond to business days, starting with the date HUD receives the first Demolition grant application and ending on the HOPE VI Demolition grant application deadline date. HUD will consider all applications received on the same date as received at the same time on that date, and those applications will all be assigned the same Ordinal.

(C) *Demolition Screening.* (1) HUD will screen the application to ensure that it meets each HOPE VI threshold criterion listed in this NOFA.

(2) If HUD determines that an application is not eligible (*e.g.*, the applicant is not a PHA, the units have already been demolished, *etc.*), HUD will not consider the application further and will notify the applicant that the application has been rejected.

(3) If HUD determines that an applicant is eligible but the application is incomplete, within approximately five business days of receipt of the application, HUD will contact the applicant in writing by fax (followed with a hard copy by mail) to request the missing information. Applicants whose applications HUD receives on the same date, and who have missing items, will be notified by HUD of their missing items on the same day to ensure that all applicants have the same number of days to provide the missing information.

Please Note: This provision means that the nearer to the deadline date you submit your application, the less time you will have to correct any deficiencies, and if HUD receives your application on the deadline date and there is a deficiency, that application will not be eligible for funding. You are advised to submit your application as soon as possible, in the event that HUD identifies a deficiency that you need to correct.

(4) If HUD determines that the information you submit in response to a notification of deficiency is correct and completes the application, HUD will add to the application's Ordinal the number of business days between notification of the deficiency and curing of the deficiency.

(5) If HUD determines that the information submitted does not make the application complete, HUD will notify you of the remaining deficiency. You will have the opportunity to submit information in response to notifications of deficiency until the HOPE VI Demolition grant application due date.

(6) If you do not submit the requested information by the HOPE VI Demolition grant deadline date, your application will be ineligible for funding.

(7) If a deficiency is cured on the same day the deficiency letter is sent, the application will add one Ordinal.

(D) *Funding.* HUD will award HOPE VI Demolition grants in the following order, based on fund availability.

(1) HUD will fund Priority Group 1 applications by Ordinal.

(2) If funds remain after HUD has funded all eligible Priority Group 1 applications, HUD will fund Priority Group 2 applications by Ordinal.

(3) If funds remain after HUD has funded all eligible Priority Group 2 applications, HUD will fund Priority Group 3 applications by Ordinal.

(4) At any stage, if there is more than one application with next Ordinal to be funded and there are insufficient funds to fund all of them, HUD will conduct a lottery among those applications to determine which application(s) will be funded.

(5) HUD reserves the right to partially fund the next eligible application if insufficient funds remain to fund the entire amount requested, and HUD determines that the funds available are adequate to carry out some significant demolition activities.

(6) If funds remain after all eligible HOPE VI Demolition grant applications have been funded or if the amount remaining is inadequate to feasibly fund the next eligible Demolition grant application, HUD reserves the right to:

(a) Reallocate unused funds to fund or supplement the next eligible HOPE VI Revitalization application(s), in rank order, or

(b) Carry over unused funds to the next fiscal year.

(E) *Notification of Funding Decisions.* Because the HOPE VI Demolition grants are awarded on a first-come, first-served basis, HUD reserves the right either to award funds to Priority Group 1 applications as soon as they are determined to be eligible for funding, or announce all awards after the HOPE VI Demolition grant application deadline date has passed. HUD will notify ineligible applicants of their ineligibility immediately after that determination has been made. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

VII. Post Award Requirements

(A) *Demolition Grant Agreement.* When you are selected to receive a Demolition grant, HUD will send you a HOPE VI Demolition Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing demolition activities. Both you and HUD will sign the cover sheet of the Grant Agreement. You must sign the Grant Agreement within 90 days of receiving it. Failure to sign the Grant Agreement within 90 days may cause the Department to withdraw its award of funds. It is effective on the date of HUD's signature.

(B) *Timeliness of Demolition.* Grantees must proceed within a reasonable timeframe, as indicated below. HUD will take into consideration delays caused by factors beyond your control when enforcing this requirement or as otherwise approved by HUD to accommodate reasonable relocation and demolition schedules.

(1) You must begin the proposed demolition within six months of the date of Grant Agreement execution.

(2) You must complete the proposed demolition within two years of the date of Grant Agreement execution.

(3) In accordance with section 24(i) of the 1937 Act, if you do not proceed within a reasonable timeframe, in the determination of HUD, HUD shall withdraw any grant amounts that you have not obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the activities of the original Grantee.

BILLING CODE 4210–33–P

U.S. Department of Housing
and Urban Development
Office of Public Housing Investments
Public and Indian Housing

OMB Approval No. 2577-0208
exp. 12/31/2004

HOPE VI REVITALIZATION APPLICATION

HOPE VI WEBSITE: www.hud.gov/hopevi

The public reporting burden for this collection of information for the HOPE VI Revitalization Program is estimated to average 190 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

HUD Form 52860-A

APPLICATION SUBMISSION INSTRUCTIONS

A. Application Preparation

The preparation of an approvable HOPE VI Revitalization application is time-consuming and can involve significant costs. You are cautioned that only applications with strong showings of readiness, need, and capacity will be selected.

1. Your application must be complete and you must present all items in a manner that is succinct and clear. Respond to *every requirement and question posed.* Many applicants lose crucial points because they do not adequately respond to a question, because language is unclear, and/or because there are inconsistencies in numbers or data in different parts of the application.

2. If you have not already done so, you are advised to enter into a meaningful planning process with affected residents and the surrounding community to achieve a consensus plan at application submission. Take careful note of the Resident Training Session and Public Meeting requirements in the NOFA. Be sure to advertise and document those meetings carefully. Note that the Resident Training Session and all of the Public Meetings must be held after the NOFA publication date. You will receive additional points under the Readiness rating factor if you conduct additional meetings.

3. Immediately contact public, private, and nonprofit entities, agencies, and organizations from which you plan to obtain letters, materials, or documents. This includes service providers, banks, state housing finance agencies, and other sources of financial assistance.

4. Note the requirement of a certification of severe physical distress by an independent, certified engineer or architect. If you request funds to pay for extraordinary site costs, you will also need to have an independent certified engineer or architect justify and verify those costs.

5. Specific formatting instructions are provided in the NOFA itself, and will be strictly enforced.

6. If you are proposing a mixed-finance project, you should immediately obtain a copy of the Mixed Finance Guidebook by calling the Public Housing Clearinghouse at 800-955-2232. Be sure to ask for the Mixed Finance Guidebook (not the HOPE VI Grant Implementation Guidebook, which has been replaced by the HOPE VI website).

B. Application Content and Organization. Provide application materials in the following order:

1. Acknowledgement of Application Receipt (HUD-2993). The very first page of your application is the Acknowledgement of Receipt form. Print or type your name and address inside the box provided. When HUD receives your application, this receipt will be detached from your application and mailed to you to indicate that your application was received. Please rely on this receipt and/or your overnight tracking number to determine whether your application was received. If you would like to have the receipt faxed to you, please include your fax number on the form.

2. Application for Federal Assistance (HUD-424). You must use a HUD-424, not an SF-424. The CFDA number for the HOPE VI Program is 14.866. This form is included in this HOPE VI Application. Please note that, because of the detailed financial

information contained within a HOPE VI application, you are not required to complete the Funding Matrix or any financial information on the 424.

3. Application Checklist. This list of Narrative Exhibits, Attachments, and Standard Certifications is designed both to assist you in ensuring that all required elements of an application are included, and to be used as a table of contents for your completed application. After you have completed your application, please enter the page numbers of the Narrative Exhibits and Attachments on this checklist.

4. The Narrative Exhibits constitute specific aspects of your Revitalization Plan and respond to the rating criteria in the HOPE VI Revitalization NOFA. The Narrative Exhibits make up the first part of the application. All narrative pages must be numbered sequentially and conform to the page number and format requirements of the NOFA.

5. Attachments must be located behind the Narrative Exhibits. Information in the Attachments may not substitute for information requested in a Narrative Exhibit. Attachments include photographs, maps, illustrations, Application Data Forms, letters committing financial support, etc. Videos and resumes are specifically prohibited. Fill out the Application Data Forms as completely as possible, using best estimates if necessary. Do not fill in fields blocked in gray. Be sure that all numbers and data throughout the Narrative Exhibits and Attachments are consistent.

6. Standard certifications and forms must be placed at the end of the application, in the order provided on the Application Checklist. Standard certifications and forms include the HOPE VI Revitalization Applicant Certifications (4 pages, to be signed by the Board Chair) and other HUD and Standard forms as identified below.

7. Unless otherwise noted, citations in the Revitalization Application instructions refer to citations in the Revitalization Grants section of the NOFA.

REVITALIZATION APPLICATION CHECKLIST/TABLE OF CONTENTS

1. Acknowledgment of Application Receipt (HUD-2993)
2. Application for Federal Assistance (HUD-424)

NARRATIVE EXHIBITS		Page Number
Exhibit A:	**SUMMARY INFORMATION**	
A.1	Executive Summary	_____
A.2	Physical Plan	_____
A.3	Hazard Reduction	_____
A.4	Demolition	_____
A.5	Disposition	_____
A.6	Site Improvements	_____
A.7	Site Conditions	_____
A.8	Separability	_____
A.9	Proximity	_____
Exhibit B:	**CAPACITY**	
B.1	Obligation of Capital Funds (MTW only)	_____
B.2	Development Capacity of Developer	_____
B.3	Development Capacity of Applicant	_____
B.4	Capacity of Existing HOPE VI Revitalization Grantees	_____
B.5	CSS Program Capacity	_____
B.6	Property Management Capacity	_____
B.7	PHA Plan	_____
Exhibit C:	**NEED**	
C.1	Severe Physical Distress	_____
C.2	Impact on the Surrounding Neighborhood	_____
C.3	Obligation of Capital Funds (MTW only)	_____
C.4	Previously-Funded Sites	_____
C.5	Need for Affordable Housing in the Community	_____
Exhibit D:	**RESIDENT AND COMMUNITY INVOLVEMENT**	
D.1	Resident and Community Involvement	_____

NARRATIVE EXHIBITS		Page Number
Exhibit E:	**COMMUNITY AND SUPPORTIVE SERVICES**	
E.1	Community and Supportive Services	_____
E.2	Endowment Trust	_____
Exhibit F:	**RELOCATION**	
F.1	Housing Choice Voucher Needs	_____
F.2	Relocation Plan	_____
Exhibit G:	**FAIR HOUSING AND EQUAL OPPORTUNITY**	
G.1	Accessibility	_____
G.2	Universal Design	_____
G.3	Fair Housing	_____
G.4	Section 3	_____
Exhibit H:	**MIXED INCOME COMMUNITIES**	
H.1	On Site Housing Unit Mix	_____
H.2	Off Site Housing	_____
H.3	Homeownership Housing	_____
Exhibit I:	**OVERALL QUALITY OF PLAN**	
I.1	Appropriateness of Proposal	_____
I.2	Appropriateness and Feasibility of the Plan	_____
I.3	Neighborhood Impact and Sustainability of the Plan	_____
I.4	Design	_____
I.5	Evaluation	_____

ATTACHMENTS

1: Application Data Form: Cover Sheet _____
2: Application Data Form: Existing Units, Occupancy, Vacancy _____
3: Application Data Form: Relocation, Income, and Non-Dwelling Structures _____
4. Application Data Form: Proposed Unit Mix Post-Revitalization _____
5: Application Data Form: Units, Accessibility, Concentration _____
6: Application Data Form: Self-Sufficiency _____
7: Application Data Form: Sources and Uses _____
8: HOPE VI Budget Form _____
9: TDC/Grant Limitations Worksheet _____

NARRATIVE EXHIBITS	Page Number
10: Extraordinary Site Costs Certification	_____
11: Cost Certification	_____
12: City Map	_____
13: Developer Certification	_____
14: Property Management Certification	_____
15: Program Schedule	_____
16: Certification of Severe Physical Distress	_____
17: Photographs of the Severely Distressed Housing	_____
18: Neighborhood Conditions	_____
19: Physical Development Resources	_____
20: CSS Resources	_____
ATTACHMENTS	
21: Anticipatory Resources	_____
22: Collateral Resources	_____
23: Resident Training and Public Meeting Certification	_____
24: Commitments with CSS Providers	_____
25: HOPE VI Revitalization Relocation Plan Certification	_____
26: Certification of Completed Relocation	_____
27: Documentation of Site Control for Off-Site Public Housing	_____
28: Documentation of Site Control, Environmental, & Neighborhood Standards	_____
29: Preliminary Market Assessment Letter	_____
30: Certification of Zoning Approval	_____
31: Project Readiness Certification	_____
32: Current Site Plan	_____
33: Photographs of Architecture in the Surrounding Community	_____
34: Conceptual Site Plan	_____
35: Conceptual Building Elevations	_____
36: Evaluation Commitment Letter(s)	_____
37: HOPE VI Revitalization Application Certifications	_____

38: Standard Forms and Certifications

- Applicant Assurances and Certifications (HUD-424-B)
- Standard Form LLL, as applicable, "Disclosure of Lobbying Activities"
- HUD-2880, "Applicant/Recipient Disclosure/Update Report
- HUD-52515, "Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program," as applicable

EXHIBIT A: SUMMARY INFORMATION

A.1 Executive Summary. Provide an Executive Summary, not to exceed three pages. Describe your Revitalization Plan, as clearly and thoroughly as possible. Do not argue for the need for the HOPE VI grant, but explain what you would do if you received a grant. Briefly describe why the targeted project is severely distressed, provide the number of units, and indicate how many of the units are occupied. Describe specific plans for the revitalization of the site. Include income mix, basic features (such as restoration of streets), and any mixed use or non-housing components. If you are proposing off site replacement housing, provide the number and type of units and describe the off site locations. Describe any homeownership components included in your Plan, including numbers of units. Briefly summarize your plans for community and supportive services. State the amount of HOPE VI funds you are requesting, and list the other resources you will use for your mixed-finance development, briefly indicating the strength of those financial commitments. Identify whether you have procured a developer or whether you will act as your own developer.

A.2 Physical Plan. Describe your planned physical revitalization activities:

a. rehabilitation of severely distressed public housing units in accordance with Section I(D) of the NOFA.

b. development of public housing replacement rental housing, both on-site and off-site, in accordance with Section I(E) of the NOFA.

c. Indicate whether you plan to use PATH technologies in the construction of replacement housing, in accordance with Section XVI(D)(3) of the NOFA.

d. market rate housing units

e. units to be financed with low-income housing tax credits

f. replacement homeownership assistance for displaced public housing residents or other public housing-eligible low-income families, in accordance with Section I(F) of the NOFA. Also describe any market-rate homeownership units planned, sources and uses of funds. Describe the relationship between the HOPE VI activities and costs and the development of homeownership units, both public housing and market rate. If you are selected for funding, you will be required to submit a Homeownership Proposal.

g. Rehabilitation or new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the targeted development and residents of off-site replacement housing. Describe the type and amount of such space and how the facilities will be used in CSS program delivery or other activities.

h. Land acquisition and infrastructure and site improvements associated with developing economic development facilities, in accordance with Section I(G)(3) of the NOFA. Note that HOPE VI grant funds may not be used to pay hard development costs or to buy equipment for retail or commercial facilities.

A.3 Hazard Reduction. For units to be rehabilitated or demolished, describe the extent of any required abatement of environmentally hazardous materials such as asbestos.

A.4 Demolition. Review Section I(B) of the NOFA. Describe your plans for demolition, including the buildings (dwelling and non-dwelling units) proposed to be demolished, the purpose of the demolition, and the use of the site after demolition. If the proposed demolition was previously

approved as a Section 18 demolition application, state the date the Section 18 demolition application was submitted to HUD and the date it was approved by HUD. Indicate whether you plan to implement the concept of Deconstruction, as described in Section XVI(D)(2) of the NOFA.

A.5 Disposition. Review Section I(C) of the NOFA. Describe the extent of any planned disposition of any portion of the site. Cite the number of units or acreage to be disposed, the method of disposition (sale, lease, trade), and the status of any disposition application made to HUD.

A.6 Site Improvements. Describe any proposed on-site improvements, including infrastructure requirements, changes in streets, etc. Describe all public improvements needed to ensure the viability of the proposed project with a narrative description of the sources of funds available to carry out such improvements.

A.7 Site Conditions. Describe the conditions of the site to be used for replacement housing. Listing all potential contamination or danger sources (e.g. smells, fire heat, explosion and noise) that might be hazardous or cause discomfort to residents, PHA personnel, or construction workers. List potential danger sources, including commercial and industrial facilities, brownfields and other sites with potentially contaminated soil, commercial airports and military airfields. Note any facilities and/or activities within one mile of the proposed site.

A.8 Separability. Review Section III(D)(11) of the NOFA, and, if applicable, address the separability of the revitalized building(s).

A.9 Proximity. If applicable, describe how two contiguous projects meet the requirements of Section III(D)(3) of the NOFA, or how a scattered site project meets the requirements of Section III(D)(4) of the NOFA.

EXHIBIT B: CAPACITY

B.1 Obligation of Capital Funds. If you are a Moving to Work participant and are not required to enter obligations into LOCCS, review Section IV(A)(2) of the NOFA and indicate the percentage of your FY 1999-2001 Capital Funds amounts you have obligated. If you are not a participant in MTW, HUD will assess your obligation of Capital Funds using information in accordance with Section IV(A)(2).

B.2 Development Capacity of Developer. Respond to Rating Factor IV(B)(1)(a) of the NOFA.

B.3 Development Capacity of Applicant. Respond to Rating Factor IV(B)(1)(b) of the NOFA.

B.4 Capacity of Existing HOPE VI Revitalization Grantees. This Rating Factor is found at Section IV(B)(2). To determine compliance with cumulative production goals for existing HOPE VI Revitalization grants, HUD will use information in the quarterly reporting system. This rating factor is only applied to PHAs with existing HOPE VI Revitalization grants from fiscal years 1993-2000.

B.5 CSS Program Capacity. Respond to Rating Factor IV(B)(3) of the NOFA.

B.6 Property Management Capacity. Respond to Rating Factor IV(B)(4) of the NOFA.

B.7 PHA Plan. Respond to Rating Factor IV(B)(5) of the NOFA.

EXHIBIT C: NEED

C.1 Severe Physical Distress. Respond to Rating Factor V(B)(1) of the NOFA.

C.2 Impact of the Severely Distressed Site on the Surrounding Neighborhood. Respond to Rating Factor V(B)(2) of the NOFA.

C.3 Obligation of Capital Funds - If you are a Moving to Work PHA participant and are not required to enter obligations into LOCCS, review Rating Factor V(B)(3) of the NOFA and provide the amount of your unobligated FY 1999-2002 Capital Grant funds. If you are not a participant in MTW, HUD will assess your obligation of Capital Funds using information in accordance with Section V(B)(3).

C.4 Previously-funded Sites. Review Section III(D)(6) of the NOFA.

C.5 Need for Affordable Housing in the Community. Respond to Rating Factor V(B)(4) of the NOFA.

EXHIBIT D: RESIDENT AND COMMUNITY INVOLVEMENT

D.1 Resident and Community Involvement. Respond to Rating Factor VII(B) of the NOFA.

EXHIBIT E: COMMUNITY AND SUPPORTIVE SERVICES

E.1 Community and Supportive Services. Review Section VIII(A) through (C) of the NOFA for information and requirements of CSS programs. Describe your CSS Plan, keeping in mind the elements of Rating Factor VIII(D) of the NOFA.

E.2 Endowment Trust. Review Section VIII(A)(3) of the NOFA. If you plan to place CSS funds in an Endowment Trust, state the dollar amount and percentage of the entire grant that you plan to place in the Trust.

EXHIBIT F: RELOCATION

F.1 Housing Choice Voucher Needs. Review Section IX of the NOFA. State the number of Housing Choice Vouchers that will be required for relocation if this HOPE VI application is approved, both in total and the number needed for FY 2004. Indicate the number of units and the bedroom breakout. As applicable, attach a Housing Choice Voucher application behind the Standard Forms tab of your application.

F.2 Relocation Plan. Respond to Rating Factor IX(E) of the NOFA. Refer to CPD Notice 02-08 for additional guidance.

EXHIBIT G: FAIR HOUSING AND EQUAL OPPORTUNITY

G.1 Accessibility: Respond to Rating Factor X(B)(1) of the NOFA.

G.2 Universal Design: Respond to Rating Factor X(B)(2) of the NOFA.

G.3 Fair Housing: Respond to Rating Factor X(D)(1) of the NOFA.

G.4 Section 3: Respond to Rating Factor X(D)(2) of the NOFA.

EXHIBIT H: WELL-FUNCTIONING COMMUNITIES

H.1 On Site Housing Unit Mix. Respond to Rating Factor XI(A) of the NOFA.

H.2 Off Site Housing. Respond to Rating Factor XI(B) of the NOFA.

H.3 Homeownership Housing. Respond to Rating Factor XI(D) of the NOFA.

EXHIBIT I: OVERALL QUALITY OF PLAN

I.1 Appropriateness of Proposal. Review Section XII(A) of the NOFA and demonstrate the appropriateness of your proposal in the context of the local housing market relative to other alternatives.

I.2 Appropriateness and Feasibility of the Plan. Respond to Rating Factor XII(B)(2).

I.3 Neighborhood Impact and Sustainability of the Plan. Respond to Rating Factor XII(B)(3) of the NOFA.

I.4 Design. Describe the features of your proposed design and respond to Rating Factor XII(B)(5) of the NOFA.

I.5 Evaluation. Respond to Rating Factor XII(B)(6) of the NOFA.

ATTACHMENTS

Attachment 1: Application Data Form: Cover Sheet

Attachment 2: Application Data Form: Existing Units, Occupancy, Vacancy

Attachment 3: Application Data Form: Relocation, Income, and Non-Dwelling Structures

Attachment 4: Application Data Form: Proposed Unit Mix Post-Revitalization

Attachment 5: Application Data Form: Planned Units, Accessibility, Concentration

Attachment 6: Application Data Form: Self-Sufficiency

Attachment 7: Application Data Form: Sources and Uses

Attachment 8: HOPE VI Budget Form. Provide the proposed HOPE VI budget on form HUD-52825-A, parts I and II. This form can be found in the HOPE VI website. Guidance on preparing a HOPE VI budget can be found on the Grant Administration page of the HOPE VI web site.

Attachment 9: TDC/Grant Limitations Worksheet. Review Section III(A)-(C) of the NOFA and complete this Total Development Cost/Grant Limitations Worksheet, as provided in this

Application. An electronic version of the worksheet in Excel is available on the HOPE VI web site.

Attachment 10: Extraordinary Site Costs Certification. If you request funds to pay for extraordinary site costs in accordance with Section III(A)(5)(b) of the NOFA, complete this Attachment 10, as provided in this Application Kit, and submit the required documentation indicated.

Attachment 11: Cost Certification. Provide a certification of cost estimates in accordance with Section III(C)(4) of the NOFA. This certification may be in the form of a letter.

Attachment 12: City Map. Provide a to-scale city map that clearly identify the following in the context of existing city streets, the central business district, other key city sites, and census tracts:

- the existing development;
- replacement neighborhoods, if available;
- off-site properties to be acquired, if any;
- the location of the Federally-designated Empowerment Zone or Enterprise Community (if applicable); and
- other useful information to place the project in the context of the city, county, or municipality and other revitalization activity underway or planned.

If you request funds for more than one project or for scattered site housing, the map must clearly show that the application meets the site and unit requirements of Sections III(D)(2) and/or (3) of the NOFA. Do not submit a foldout map. This is the only Attachment that may be submitted on 8-1/2" by 14" paper.

Attachment 13: Developer Certification. In accordance with Section IV(A)(4) of the NOFA, provide a certification that you have either procured a developer in accordance with the requirements set by HUD or that you will act as your own developer. This certification may be in the form of a letter.

Attachment 14: Property Management Certification. Provide a certification that you and/or your selected Property Manager will implement the operation and management principles and policies listed in Section IV(A)(5) of the NOFA. This certification may be in the form of a letter.

Attachment 15: Program Schedule. Review Section IV(B)(1)(b)(i)(C) of this NOFA and provide a program schedule accordingly.

Attachment 16: Certification of Severe Physical Distress. In accordance with Section V(A)(4) of the NOFA, an engineer or architect must complete Attachment 16, as provided in this NOFA. No backup documentation is required for this certification.

Attachment 17: Photographs of the Severely Distressed Housing. Review Rating Factor V(B)(1) of the NOFA and submit photographs of the targeted severely distressed public housing that illustrate the extent of physical distress.

Attachment 18: Neighborhood Conditions. Submit documentation described in Rating Factor V(B)(2) of the NOFA. Such documentation may include crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and other indications of neighborhood distress and/or disinvestment.

Attachment 19: Physical Development Resources In accordance with Rating Factor VI(H)(1) of the NOFA, complete this Attachment 19, as provided in this application, by entering the

dollar value of each resource that will be used for physical development. For each resource entered, you must submit backup documentation behind Attachment 19.

Attachment 20: CSS Resources. In accordance with Rating Factor VI(H)(2) of the NOFA, complete this Attachment 20, as provided in this Application, by entering the dollar value of all resources that will be used for CSS activities. For each resource entered, submit backup documentation behind Attachment 20.

Attachment 21: Anticipatory Resources. Complete Attachment 21, as provided in this Application, by entering the dollar value of all anticipatory resources as described in Rating Factor VI(H)(3). For each resource entered, submit backup documentation behind Attachment 21.

Attachment 22: Collateral Resources. Complete Attachment 22, as provided in this Application, by entering the dollar value of all collateral resources as described in Rating Factor IX(H)(4). For each resource entered, submit backup documentation behind Attachment 22.

Attachment 23: Resident Training and Public Meeting Certification Review Section VII(A) of the NOFA and complete Attachment 23, as provided in this application.

Attachment 24: Commitments with CSS Providers. In accordance with Section VIII(D)(3) of the NOFA, provide letters from CSS providers that have made commitments to participate in your CSS activities if you are awarded a HOPE VI Revitalization grant under the NOFA.

Attachment 25: HOPE VI Revitalization Relocation Plan Certification. In accordance with Section IX(D) of the NOFA, submit a certification that you have completed a HOPE VI Relocation Plan in conformance with the URA. This certification may be in the form of a letter. Refer to CPD Notice 02-08 for additional guidance, including a template. The HOPE VI Relocation Plan Guide should not be submitted; only the certification should be in the application. This Attachment is not applicable if the targeted project is vacant as of the application due date.

Attachment 26: Certification of Completed Relocation. If applicable, submit a certification in accordance with Section IX(E)(1) and (2)(a) of the NOFA and Section XII(B)(4)(a). You must include this certification if you are trying to evidence that your site was vacant at the time applications were due, in order to meet the threshold at IX(D). This certification may be in the form of a letter.

Attachment 27: Documentation of Site Control for Off-Site Public Housing. If applicable, provide evidence of site control for rental replacement units or land, in accordance with Section XI(B)(4) of the NOFA.

Attachment 28: Documentation of Site Control, Environmental, and Site & Neighborhood Standards. If applicable, provide a certification that the site(s) acquired for off-site public housing meet site control, environmental and site and neighborhood standards, as provided in Section XI(B)(5) of the NOFA. This certification may be in the form of a letter.

Attachment 29: Preliminary Market Assessment Letter. In accordance with Section XI(C) of the NOFA, if you include market rate housing, in your Revitalization Plan, you must demonstrate that there is a demand for the housing units of the type, number, and size proposed in the location you have chosen. In your application you must provide a preliminary market assessment letter prepared and signed by an independent, third party, credentialed market resource firm or professional that describes its assessment of the market for the proposed

residential market rate units, and any community facilities, economic development, and retail structures.

Attachment 30: Certification of Zoning Approval. Respond to section XI(E) of the NOFA..

Attachment 31: Project Readiness Certification. Complete Attachment 31, as provided in this application, by indicating which of the items in Rating Factor XII(B)(4) of the NOFA have been completed.

Attachment 32: Current Site Plan, which shows the various buildings of the project and identifies which buildings are to be rehabilitated, demolished, or disposed of.

Attachment 33: Photographs of Architecture in the Surrounding Community. Provide photographs in conjunction with Rating Factor XII(B)(5) (Design) of the NOFA.

Attachment 34: Conceptual Site Plan, which indicates where proposed construction and rehabilitation activities will take place and any planned acquisition of adjacent property and/or buildings.

Attachment 35: Conceptual Building Elevations.

Attachment 36: Evaluation Commitment Letter(s). Review Section XII(B)(6) of the NOFA and provide the requested commitment letter(s) that addresses the indicated evaluation areas.

Attachment 37: HOPE VI Revitalization Applicant Certifications. These certifications (4 page document) must be signed by the Chairman of the Board of the PHA, NOT the Executive Director.

Attachment 38: Standard Forms and Certifications. The following Standard/HUD Forms should be placed in this order:

- Applicant Assurances and Certifications (HUD-424-B)
- Disclosure of Lobbying Activities (SF-LLL), as applicable
- Applicant/Recipient Disclosure/Update Report (HUD-2880)
- Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program (HUD-52515), as applicable

U.S. Department of Housing
and Urban Development
Office of Public Housing Investments
Public and Indian Housing

OMB Approval No. 2577-0208
exp. 12/31/2004

HOPE VI DEMOLITION GRANT APPLICATION

HOPE VI WEBSITE: www.hud.gov/hopevi

The public reporting burden for this collection of information for the HOPE VI Demolition Program is estimated to average 40 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

HUD Form 52860-A

APPLICATION SUBMISSION INSTRUCTIONS

A. Application Content and Organization.

1. The first page of your application is the **HOPE VI Demolition Application Checklist**.

   a. Use the left side of the Checklist to make sure that all elements of the application are included.

   b. HUD will use the right side of the Checklist to screen the application for completeness.

   Please make sure that the HOPE VI Demolition Application Checklist is on the very top of your application. No transmittal letter is requested.

2. The next page is the **HOPE VI Demolition Application Receipt** (HUD-2993-A). This form serves both as an acknowledgement that HUD received your application, but also as a fax transmittal for the checklist above if HUD has found deficiencies in your application.

   a. Print or type the name and address of the person that should receive the receipt in the box provided and provide all of the information requested above the line.

   b. HUD will record the date received, ordinal assigned, and application number.

   c. After HUD has screened the application for completeness, it will either:

      i. Fax the receipt to the fax number listed on the Receipt indicating that no deficiencies have been found, or

      ii. Fax the receipt to you with the HOPE VI Demolition Checklist and a letter, if necessary, indicating the missing documentation. HUD will not notify you of deficiencies by telephone. **It is very important that the fax number listed on the Application Receipt is correct so that it gets to the right person on your staff.**

3. The **Application for Federal Assistance (HUD-424)** and **Applicant Assurances and Certifications (HUD-424-B)** are the next pages of the application. You will find a copy of these in this HOPE VI Application and on the HOPE VI Website.

4. Attach **Exhibits A through G** next. Provide the narrative and attachments in the order presented. PLEASE DO NOT PROVIDE ANY INFORMATION THAT IS NOT REQUESTED IN THIS APPLICATION. Extraneous material hinders application review, does not improve an application, and may obscure important information. The HOPE VI Budget form needed for Exhibit E and the Housing

Choice Voucher (Section 8) application for Exhibit F can be found in this HOPE VI Application and on the HUD website.

B. Application Format

To speed the processing of your application, please follow these instructions when assembling your package:

1. Use letter-sized paper (8 ½" x 11"), one side only.

2. Mark each Exhibit with an appropriately labeled tab.

3. Package the application as securely and simply as possible; do not use a three ring binder.

4. Two-hole punch the pages at the top with a 2-3/4" center.

HOPE VI DEMOLITION
APPLICATION CHECKLIST

PHA Name: _____

Development Name: _____

PHA CHECKOFF		HUD VERIFICATION
_____	HOPE VI Demolition Application Checklist	_____
_____	HOPE VI Demolition Application Receipt (HUD-2993-A)	_____
_____	Application for Federal Assistance (HUD-424)	_____
_____	Applicant Assurances and Certifications (HUD-424B)	_____
	Exhibit A: Priority Group and Documentation of Eligibility:	
_____	Priority 1: HUD's letter to PHA approving Section 202 Conversion Plan	_____
_____	Priority 2A: PHA's letter transmitting Section 202 Conversion Plan to HUD	_____
_____	Priority 2B: Documentation of HUD's Determination of Section 202 Status	_____
_____	Priority 3: HUD's letter to PHA approving Section 18 demolition application	_____
_____	**Exhibit B: Application Information**	_____
_____	**Exhibit C: Program Schedule**	_____
_____	**Exhibit D: Grant Limitations Worksheet**	_____
_____	**Exhibit E: HOPE VI Budget**	_____
_____	**Exhibit F: Housing Choice Voucher (Section 8) Application**	_____
_____	**Exhibit G: Nondwelling Structures Certification**	_____

EXHIBIT A: PRIORITY GROUP AND DOCUMENTATION OF ELIGIBILITY

Indicate the Priority Group in which your application qualifies and submit the corresponding documentation of eligibility.

_____ Priority 1: Approved Section 202 Mandatory Conversion Plan

Submit your letter from HUD approving your Section 202 Mandatory Conversion Plan. See **Section VI (A)(2)(a)** of the Demolition section in this NOFA regarding Priority Group 1.

Priority 2: See **Section VI (A)(2)(b)** of the Demolition section in this NOFA regarding Priority Group 2.

_____ Priority 2(A): Submitted Section 202 Mandatory Conversion Plan.

Submit your letter to HUD transmitting your Section 202 Plan to HUD.

_____ Priority 2(B): HUD-Designated Section 202 Units

Submit evidence that the targeted units, in HUD's sole determination under section 537(c) of the Public Housing Reform Act of 1998, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section VII (B) of the Demolition section in this NOFA.

_____ Priority 3: Approved Section 18 Demolition Application

Submit your letter from HUD approving your Section 18 Demolition Application. If HUD approves your demolition application on the **day before** or **on the application deadline date,** the requirement to provide evidence of approval will be considered to be met and you will not have to submit HUD's approval letter back to HUD. See **Section VI (A)(2)(c)** of the Demolition section in this NOFA regarding Priority Group 3.

EXHIBIT B: APPLICATION INFORMATION

PHA Name:_____

Development Name:_____

Development Number: _____

Date of Full Availability (DOFA): _____

1. Describe the scope of the proposed demolition. For the project, provide the number of:
   a. Original dwelling units and buildings,
   b. Units previously demolished or disposed of, and
   c. Units proposed for demolition with funds from this HOPE VI Demolition Grant Application.

2. In the case of partial demolition of a site, describe any minimal site restoration that will take place after demolition and subsequent site improvements needed to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

3. Describe any non-dwelling facilities to be demolished. Explain the relationship between the non-dwelling facilities and the dwelling units to be demolished, both in terms of proximity and use.

4. Demonstrate the appropriateness of your proposal in the context of the local housing market relative to other alternatives. This is a statutory threshold criterion. See **Section IV(C)** of the Demolition section in this NOFA.

5. Describe the proposed plan for the use of the site after demolition, and the resources that will be used to carry out that plan.

6. Provide the street address for each unit to be demolished, including ZIP Code.

EXHIBIT C: PROGRAM SCHEDULE

Refer to Section VII (B) of the Demolition section in this NOFA. Provide a Program Schedule that clearly indicates that you will start demolition activity within six months from the date of Grant Agreement execution and complete the demolition within two years from the date of Grant Agreement execution. Assume a Grant Agreement execution date of May 1, 2004.

EXHIBIT D: GRANT LIMITATIONS WORKSHEET

1. Demolition. Number of dwelling units approved for demolition:

   _____ x $6,000 $_____

2. Relocation/Self-Sufficiency. Number of dwelling units approved for demolition that are **occupied** as of the date of the HOPE VI Demolition Application submission:

   _____ x $3,000 $_____

3. Nondwelling Structures $_____

4. Total allowable cost (1 + 2 + 3) $_____

5. Total funds requested $_____

EXHIBIT E: HOPE VI BUDGET

1. Provide your proposed budget on Part I of the HOPE VI Budget Form (HUD-52825-A). A copy of the Budget form can be found in this HOPE VI Application and can be downloaded from the HOPE VI Website.

2. On Part II of the Budget:

   a. Provide a detailed itemization of the costs of all activities, including demolition, hazard abatement, site restoration, fees, and administrative costs. See **Section V** of the NOFA for eligible Demolition Grant activities.

   b. Differentiate between costs for dwelling units and nondwelling facilities.

   c. Itemize all costs budgeted for relocation activities.

EXHIBIT F: HOUSING CHOICE VOUCHER (SECTION 8) APPLICATION

As applicable, provide the Housing Choice Voucher application. State the number of Housing Choice Vouchers that will be required for relocation in this HOPE VI application is approved, both in total and the number needed for FY 2004. Indicate the number of units and the bedroom breakout.

EXHIBIT G: NONDWELLING STRUCTURES CERTIFICATION

I hereby certify that:

1. I am licensed as an engineer _____ or architect _____ (check one) by the licensing board for the state in which the public housing project identified below is located.

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. Costs to demolish significant nondwelling structures may be incurred in conjunction with the demolition of severely distressed public housing as part of a HOPE VI Demolition Grant Application. Examples of eligible demolition costs related to significant nondwelling structures include, but are not limited to, the demolition of heating plants, community buildings, or streets on the site of the severely distressed project.

4. I have reviewed the attached description and calculation of costs for the demolition of significant nondwelling structures related to the demolition of dwelling units at the site identified below, as requested by the applicant Housing Authority listed below, and affirm that those costs qualify as allowable nondwelling structures costs (as defined in Paragraph 3 above) and are justified and reasonable in light of my assessment of the site of the project and the proposed work to be completed.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Required Attachment: Description of proposed demolition of nondwelling structures and itemized listing of costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

Application for Federal Assistance

U.S. Department of Housing and Urban Development

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission
☐ Application ☐ Preapplication

2. Date Submitted

3. Date and Time Received by HUD

4. HUD Application Number

5. Existing Grant Number

6. Applicant Identification Number

7. Applicant's Legal Name

8. Organizational Unit

9. Address (give city, county, State, and zip code)
A. Address:
B. City:
C. County:
D. State:
E. Zip Code:

10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes)
A. Name:
B. Title:
C. Phone:
D. Fax:
E. E-mail:

11. Employer Identification Number (EIN) or SSN

12. Type of Applicant (enter appropriate letter in box)

A. State	I. University or College
B. County	J. Indian Tribe
C. Municipal	K. Tribally Designated Housing Entity (TDHE)
D. Township	L. Individual
E. Interstate	M. Profit Organization
F. Intermunicipal	N. Non-profit
G. Special District	O. Public Housing Authority
H. Independent School District	P. Other (Specify)

13. Type of Application
☐ New ☐ Continuation ☐ Renewal ☐ Revision

If Revision, enter appropriate letters in box(es) ☐ ☐
A. Increase Amount B. Decrease Amount C. Increase Duration
D. Decrease Duration E. Other (Specify)

14. Name of Federal Agency
U.S. Department of Housing and Urban Development

15. Catalog of Federal Domestic Assistance (CFDA) Number
14 ---
Title:
Component Title:

16. Descriptive Title of Applicant's Program

17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)

18a. Proposed Program start date

18b. Proposed Program end date

19a. Congressional Districts of Applicant

19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_____
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Previous versions of HUD-424 and 424-M are obsolete

form **HUD-424** (01/2003)
ref. OMB Circular A-102

Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

Grant Program*	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
									0.00
									0.00
									0.00
									0.00
									0.00
Grand Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

* For FHIPs, show both initiative and component

Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

23. Signature of Authorized Official	Name (printed)
Title	Date (mm/dd/yyyy)

Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.
2. Enter the date you are submitting your application to HUD.
3. This box will be completed by HUD. When received by HUD, your application will be stamped:
   (a) with a date; and
   (b) with the time received.
4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.
5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.
6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.
7. Enter the legal name of your organization applying for HUD funding.
8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.
9. Enter the complete address of your organization.
10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.
11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.
12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.
13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

- "New" means you are applying for a new grant award.
- "Continuation" means you are requesting an extension of an existing award.
- "Renewal" means you are requesting funding for renewal of an existing grant, e.g. Supportive Housing Program (SHP) or Shelter + Care grant.
- "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.
15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.
16. Enter a brief description of your program and key activities.
17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".

18a. Enter the proposed start date.

18b. Enter the proposed end date.

19a. List the Congressional District(s) where your organization is located.

19b. List any Congressional District(s) where your program of activities or project sites will be located.

20. You must complete the funding matrix on page 2 of this form. Enter the following information:

Grant Program: The HUD funding program under which you are applying.

HUD Share: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

Applicant Match: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Other Federal Share: Enter the amount of other Federal funds for your program of activities.

Instructions for the HUD-424 (Continued)

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.
Local/Tribal Share: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.
Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.
Program Income: Enter the amount of program income you expect to generate over the life of your award.
Total: Please total all columns and fill in the amounts.
21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

Applicant Assurances and Certifications	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____.

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; excepin applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certificationand further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. Will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in Paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

Applicant Assurances and Certifications (Continued)	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

HOPE VI Budget
Part I: Summary

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp. 12/31/2004)

Public Reporting Burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This information is necessary to provide details on the funds requested by Housing Authorities. The form displays the amount requested, broken down by budget line item, with each use explained on Part II. The requested information will be reviewed by HUD to determine if the amount requested is reasonable and whether the required percentages of capital and supportive services funds are met. Responses to the collection are required by the appropriation under which the HOPE VI grant was funded. The information collected does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

PHA Name

HOPE VI Grant Number

☐ Original HOPE VI Budget ☐ Revised HOPE VI Budget ☐ Predevelopment Budget

Line No.	Summary by Budget Line Item	Capital Costs	Supportive Services Costs	Total Funds Requested	HUD Approved Funds
1	Total Non-HOPE VI Funds				
2	1408 Management Improvements				
3	1410 Administration				
4	1430 Fees and Costs				
5	1440 Site Acquisition				
6	1450 Site Improvement				
7	1460 Dwelling Structures				
8	1465 Dwelling Equipment—Nonexpendable				
9	1470 Nondwelling Structures				
10	1475 Nondwelling Equipment				
11	1485 Demolition				
12	1495 Relocation Cost				
13	**Amount of HOPE VI Grant** (Sum of lines 2-12)				

Signature of PHA Executive Director

Date (mm/dd/yyyy)

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Authorized HUD Official

Date (mm/dd/yyyy)

Previous editions are obsolete

Page ___ of ___

form **HUD-52825-A** (12/96)
ref Handbook 7485.1

HA Name	HOPE VI Budget **Part II: Supporting Pages**

Work Item Number 1	Budget Line Item Number 2	Statement of Need 3	Description of Proposed/Approved Action and Method of Accomplishment 4	Individual Project Number 5	Total Funds Requested 6	HUD-Approved Funds 7

Previous editions are obsolete

Page ___ of ___

form **HUD-52825-A** (12/96)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-52825-A,

HOPE VI Budget Submission:

When requested by HUD, prepare a separate form HUD-52825-A (Parts I and II) for the HOPE VI program, describing the activities which are planned to be undertaken with the HOPE VI funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when the HUD-established threshold requires prior HUD approval to revise the HOPE VI Budget.

Part I: Summary

HA Name - Enter the name of the Housing Authority (HA).

HOPE VI Grant Number - Enter the unique HOPE VI Grant number assigned by HUD upon grant approval.

FFY of Grant Approval - Enter the Federal Fiscal Year (FFY) in which the HOPE VI grant is being approved/was approved. (last 2 digits of HOPE VI Grant Number).

Type of Submission - Check the appropriate box and indicate whether the submission is the Original HOPE VI Budget or a Revised HOPE VI Budget (and revision number).

Total Funds Approved:

Line 1 - Enter the amount rounded to the nearest ten dollars, for all work that will be undertaken from non-HOPE VI funds. Enter zero if no work will be undertaken from non-HOPE VI funds.

Lines 2 through 12 - For each line, enter the appropriate amount rounded to the nearest ten dollars, or zero if no work will be undertaken in a particular HOPE VI budget line item.

Line 13 - Amount of HOPE VI Grant - Enter the sum of lines 2 through 12.

Part II: Supporting Pages

1. **Work Item Number** - Number each work item sequentially.
2. **Budget Line Item Number** - Enter the appropriated HOPE VI budget line item which corresponds to the work item described.
3. **Statement of Need**
4. **Description of Proposed/Approved Action and Method of Accomplishment** - For each HOPE VI budget line item listed, provide a statement of need and a description of all work items (physical or management, as applicable) that will be funded with HOPE VI funds, including management improvements, supportive services, administrative costs, equipment, etc. Enter the quantity of the work as a percentage or whole number, Describe administrative costs in sufficient detail to clearly identify items.
5. **Individual Project Number** - Enter the abbreviated (e.g., VA-36-1) of the development where the work items will be undertaken.
6. **Total Funds Requested** - For each work item and HA-wide activity described, enter the total funds requested. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage.

Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 03/31/2004)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	☐	☐		
for Section 8 Vouchers?	☐	☐		

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the waiting list)

	Number of Dwelling Units by Bedroom Size							Total Dwelling Units
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates								
Vouchers								

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

E. Housing Quality Standards (HQS). (Check applicable box)

☐ HUD's HQS will be used with no modifications ☐ Attached for HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory	
	Phone No.	Date

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form HUD-2993 (2/99)

HOPE VI Revitalization
Application Data Form

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public Reporting Burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this collection of information is mandatory to obtain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Attachment 1: *Application Data Form: Cover Sheet*

Existing Development Name(s): _____

Applicant Information *PHA Number:* _____

PHA Name: _____

PHA Mailing Address: _____

City, State, Zip: _____ *Main Telephone:* _____

PHA Executive Director: _____ *Telephone:* _____ *Fax:* _____

Email Address: _____

HOPE VI Coordinator: _____ *Telephone:* _____ *Fax:* _____

Email Address: _____

HOPE VI Developer (if any): _____ *Telephone:* _____ *Fax:* _____

HOPE VI Developer Contact: _____ *Email Address:* _____

Program Manager (if any): _____ *Telephone:* _____ *Fax:* _____

Email Address: _____

Additional Partner: _____ *Functional Title:* _____

Additional Partner: _____ *Functional Title:* _____

Street Address, City, State, Zip: _____

Existing Project Number(s): _____ *Neighborhood/ Area of town:* _____

New Development Name (if any): _____

Mixed Income Proposed? Yes/No *Mixed Finance Proposed?* Yes/No

Data Summary

	Existing	*Post-Revitalization*
Number of replacement public housing units (on/off-site, including Affordable Lease/Purchase, Affordable Fee Simple Homeownership and Second Mortgage Only--excluding rehabilitated units)		
Number of non-public housing, subsidized units (on/off-site, including homeownership)		
Number of market-rate units (no income restrictions)		
Number of other units		
TOTAL NUMBER OF POST-DEVELOPMENT UNITS		
Number of units to be rehabilitated (excluding acquisition with rehab)		
Number of newly constructed on-site units (including acquisition with rehab)		
Number of newly constructed off-site units (including acquisition with rehab)		
Number of occupied units (at time of application)		
Number of vacant units (at time of application)		

Attachment 2: *Application Data Form: Existing Units, Occupancy, and Vacancy*

Existing Housing Units at Time of Grant Application

Building Type	*Size*	*Number Occupied*	*Number Vacant*	*Total Units*	*Converted to Non-Dwelling*	*Demo Planned*
Row	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Detached/ Semi-Detached	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Walkup	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Elevator	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Grand Total						

Attachment 3: *Application Data Form: Relocation, Income, and Non-Dwelling Structures*

Relocation/Occupancy

Relocation Strategy	Planned
Original households to be provided Section 8 certificates/vouchers	
Original households to be moved within public housing (on and off-site)	
Original households to move to non-assisted housing/unknown	
Total	

Number of Section 8 certificates/vouchers requested/received from HUD for this project:	Requested	Received

Number of occupied units at time of grant application: _____

Projected number of occupied units at time of demolition application approval: _____

Returning Households	Planned
Number of original households estimated to return to revitalized HOPE VI units (both on-site and off-site):	
Number of these households to be housed in new construction	

Household Income	Existing	Post Development
Average income (as percentage of Median) of public housing residents in development		
Average income (as percentage of Median) of otherwise subsidized residents in neighborhood		
Average income (as percentage of Median) of market-rate residents in the neighborhood		
Resident Profile (not mutually exclusive)		
Total number of residents		
Number of children 6-18 years of age		
Number of senior citizens		
Number of individuals with disabilities		

Non-Dwelling Structure Summary				
Proposed non-dwelling structures (please describe, including type of facility and whether proposing new construction or rehabilitation)	*New or Rehab*	*Square Footage*	*Total Cost*	*Cost per Sq. Ft.*

Attachment 4: *Application Data Form: Proposed Unit Mix Post-Revitalization*

New Construction (include any acquisition w/rehab) — *Rehabilitation*

Row: New						*Row: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Detached/Semi-detached: New						*Detached/Semi-detached: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Walkups: New						*Walkups: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Elevator: New						*Elevator: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Grand Total						Grand Total					

* ACC units include PH rental, PH/LIHTC, and Affordable Lease/Purchase with HOPE VI and/or PH funds.

** Non-ACC units have no PH or HOPE VI funds and will not be under ACC.

Attachment 5: *Application Data Form: Units, Accessibility, and Concentration*

Planned Units

Rental Units: ACC							
PH Only		PH/LIHTC		PH/Other		Total ACC	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Rental Units: Non-ACC							
LIHTC		CDBG, HOME, or other subsidy		No Income Restrictions		Total Non-ACC	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Homeownership Units											
Affordable Lease/Purchase th HOPE VI and/or PH funds		Affordable Fee Simple Homeownership with HOPE VI and/or PH funds		Second Mortgage Only with HOPE VI and/or PH funds		Homeownership with other subsidies (No HOPE VI or PH funds)		Market Rate Homeownership (No subsidies)		Total Homeownership	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Other Units (operating subsidy only, etc)							
Type:		Type:		Type:		Total Other Units	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Grand Total	
On-Site	Off-Site
Grand Total - All Units	

Accessibility

New Construction	Rental Units (including Lease/Purchase)	Homeownership Units	Total
	% of Category	% of Category	% of Category
Mobility-Impaired (wheelchair)			
Hearing-Impaired			
Sight-Impaired			
Visitability			

Rehabilitation	Rental Units (including Lease/Purchase)	Homeownership Units	Total
	% of Category	% of Category	% of Category
Mobility-Impaired (wheelchair)			
Hearing-Impaired			
Sight-Impaired			
Visitability			

Concentration

	Pre-Development	Post-Development
Density of on-site development (units per acre)		
Percent of very low income households in the development (30% of median or below)		

Attachment 6: *Application Data Form: Self-Sufficiency, Page 1*

NOTE: If property is vacant, describe previous residents.

	During Last 12 Months	At Time of Application	At Grant Award	Projected One Year after Grant Award	Projected Two Years after Grant Award	Projected at Close of Grant
A. Graduation from Public Assistance						
Number of households whose primary monthly source of income is:						
Wages/Salary						
TANF						
Other						
B. Employment/Obstacles to Employment						
Number of TANF participants enrolled in job training programs						
Number of non-TANF participants enrolled in job training programs						
Number of unemployed residents placed in:						
Section 3 jobs						
Non-Section 3 jobs						
C. Economic Development						
Number of resident-owned businesses						
D. Section 3						
Dollar amount of HOPE VI contracts going to Section 3 firms						
E. Education						
Number of residents without a high school diploma or G.E.D.						
Number of residents with a high school diploma, G.E.D., or higher degree						
F. Homeownership						
Number of residents in homeownership counseling						
G. Case Management						
If you have a Family Supportive Services program:						
Number of residents enrolled in FSS program						
Dollar amount in escrow accounts						
H. Youth Programs						
Number of youth participating in youth programs						
Number of children participating in day care programs						
I. Health						
Number of partnerships with healthcare agencies (e.g., clinics, hospitals, universities)						
J. Transportation						
Number of residents who use public transportation to get to work or services						

Attachment 6: *Application Data Form: Self-Sufficiency, Page 2*

K. Self-Sufficiency Projected Spending

Planned Spending	HOPE VI Funds	Other Funds	Total
Day Care			
Health Care			
Education			
Job Training			
Business Development Training			
Case Management			
Other (specify)			
Other (specify)			
Other (specify)			
Other (specify)			
Other (specify)			
Other (specify)			
TOTAL			

L. Self-Sufficiency: Programs and Partners

List of Self-Sufficiency (CSS) Programs	*List of Self-Sufficiency Partners*

Attachment 7: *Application Data Form: Sources and Uses, Page 1*

Uses ($)*	HOPE VI Uses ($)	+	Non-HOPE VI Uses ($)	=	Total
Administration					
Administration					
Management Improvements					
Management Improvements - Dev					
Management Improvements - CSS					
Acquisition					
Site Acquisition					
Building Acquisition, Turnkey					
Building Acquisition, Rehabilitation					
Building Acquisition, Non-Dwelling					
Building Remediation/Demolition					
Remediation, Dwelling Units					
Demolition, Dwelling Units					
Remediation, Non-Dwelling Units					
Demolition, Non-Dwelling Units					
Demolition, Other					
Site Improvements					
Site Remediation					
Site Infrastructure					
Off-site Improvements					
Construction					
Dwelling Structures - Hard Costs					
Non-Dwelling - Hard Costs					
General Requirements					
Builder's Profit					
Builder's Overhead					
Bond Premium					
Hard Cost Contingency					
Equipment					
Dwelling Equipment					
Non-Dwelling Equipment					
Professional Fees/Consultant Services					
Program Management Services					
Architectural					
Engineering					
Construction Management Services					
Appraisal					
Environmental					
Market Study					
Historic Preservation Documentation					
Other					
Legal					
Organizational					
Syndication					
PHA Outside Counsel					
Other					
Tax Credit					
Accounting					
Tax Credit Application					
Tax Credit Monitoring Fee					
Consultant					
Other					
Page 1 Total	$		$		$

Attachment 7: *Application Data Form: Sources and Uses, Page 2*

Uses ($)*	HOPE VI Uses ($)	+	Non-HOPE VI Uses ($)	=	Total
Other Development Costs (Soft Costs)					
Accounting Fees					
Financing Fees					
Permit Fees					
Title/Recording/Settlement Fees					
Real Estate Taxes During Construction					
Insurance During Construction					
Interest During Construction					
Bridge Loan Interest					
Marking/Rent-up Expenses					
Initial Operating Deficit					
Soft Cost Contingency					
Other					
Relocation					
Relocation Costs					
Developer Fee					
Developer Fee					
Reserves					
Operating Reserve					
Other Reserves					
Page 2 Total					
GRAND TOTAL USES:					
	$		$		$
	$		$		$
			Total Uses		$

Sources ($)	
HUD Funds	
HOPE VI Revitalization	
PH Capital Fund	
Modernization	
PH Development	
MROP	
HOPE VI Demolition Grant	
Other HUD Funds	
HOME	
CDBG	
Other	
Total HUD Funds	$
Non-HUD Public Funds	
State Funds	
Local Funds (Non PHA)	
PHA Funds	
Other Funds	
Describe Other	
Total Non-HUD Public Funds	$
Private Funds	
Tax Exempt Bonds	
Taxable Bonds	
Private LIHTC	
Other Equity	
Homebuyer Down Payment	
Donations/Grants	
Private Lender	
Other	
Describe Other:	
Total Private Funds	$
Total Sources	$

Attachment 9:
TDC/Grant Limitations Worksheet

FOLLOW THE STEP-BY-STEP INSTRUCTIONS Page 1

Note: If completing Attachment 9 manually, rather than using the Excel workbook, start at Step 4 (page 2).

Step 1. Select your City from the menu below.
Click as indicated to see the lists of cities, scroll through the list, click on your City, and click "OK."

Step 2. Repeat Step 1 to select your State from the menu below.
Click as indicated to see the lists of states, scroll through the list, click on your State, and click "OK."

This table includes all Total Development Cost (TDC) dollar limits published in HUD Notice PIH 2001-22. If your City is not shown, contact Mr. Satinder Munjal for assistance: HUD Office of Public Housing Investments, (202) 708-0614, extension 4196.

If you have selected a valid City/State combination, a table will be created that extends down to row 82. The TDC limits for each unit type shown on this table will be transferred automatically to the table on the next worksheet, "TDC Limit Calculation."

Step 3. After selecting the appropriate City and State, go to Step 4 on the worksheet entitled "TDC Limit Calculation" by clicking on the worksheet tab at the bottom of this screen.

City	ABILENE	<-- Select City here
StateName	TEXAS	<-- Select State here

		Bedrooms	Type	Data	Total
Detached / Semi-Detached	TDC Limit per Unit	0	Detached/Semi-Detached	0 Bedrooms, TDC	$ 75,868
		1		1 Bedrooms, TDC	$ 100,130
		2		2 Bedrooms, TDC	$ 131,872
		3		3 Bedrooms, TDC	$ 160,147
		4		4 Bedrooms, TDC	$ 189,415
		5		5 Bedrooms, TDC	$ 207,906
		6		6 Bedrooms, TDC	$ 224,917
	HCC Limit per Unit	0		0 Bedrooms, HCC	$ 43,353
		1		1 Bedrooms, HCC	$ 57,217
		2		2 Bedrooms, HCC	$ 75,355
		3		3 Bedrooms, HCC	$ 91,512
		4		4 Bedrooms, HCC	$ 108,237
		5		5 Bedrooms, HCC	$ 118,804
		6		6 Bedrooms, HCC	$ 128,524
Elevator	TDC Limit per Unit	0	Elevator	0 Bedrooms, TDC	53,437
		1		1 Bedrooms, TDC	74,811
		2		2 Bedrooms, TDC	96,186
		3		3 Bedrooms, TDC	128,248
		4		4 Bedrooms, TDC	160,310
		5		5 Bedrooms, TDC	181,685
		6		6 Bedrooms, TDC	203,060
	HCC Limit per Unit	0		0 Bedrooms, HCC	33,398
		1		1 Bedrooms, HCC	46,757
		2		2 Bedrooms, HCC	60,116
		3		3 Bedrooms, HCC	80,155
		4		4 Bedrooms, HCC	100,194
		5		5 Bedrooms, HCC	113,553
		6		6 Bedrooms, HCC	126,912
Row House	TDC Limit per Unit	0	Row House	0 Bedrooms, TDC	63,227
		1		1 Bedrooms, TDC	89,548
		2		2 Bedrooms, TDC	117,117
		3		3 Bedrooms, TDC	141,958
		4		4 Bedrooms, TDC	167,557
		5		5 Bedrooms, TDC	183,440
		6		6 Bedrooms, TDC	198,105
	HCC Limit per Unit	0		0 Bedrooms, HCC	36,987
		1		1 Bedrooms, HCC	51,170
		2		2 Bedrooms, HCC	66,924
		3		3 Bedrooms, HCC	81,119
		4		4 Bedrooms, HCC	95,747
		5		5 Bedrooms, HCC	104,823
		6		6 Bedrooms, HCC	113,203
Walkup	TDC Limit per Unit	0	Walkup	0 Bedrooms, TDC	54,018
		1		1 Bedrooms, TDC	72,375
		2		2 Bedrooms, TDC	92,014
		3		3 Bedrooms, TDC	120,939
		4		4 Bedrooms, TDC	148,517
		5		5 Bedrooms, TDC	166,319
		6		6 Bedrooms, TDC	186,219
	HCC Limit per Unit	0		0 Bedrooms, HCC	30,867
		1		1 Bedrooms, HCC	41,357
		2		2 Bedrooms, HCC	52,579
		3		3 Bedrooms, HCC	69,108
		4		4 Bedrooms, HCC	84,867
		5		5 Bedrooms, HCC	95,182
		6		6 Bedrooms, HCC	106,411

Attachment 9:
TDC/Grant Limitations Worksheet

Page 2

Step 4. Enter name of PHA:

Step 5. (a) Enter name(s) of project(s):

(b) Enter City (from TDC table): ABILENE
(c) Enter State (from TDC table): TEXAS

Note: If the selected City or State is wrong, return to Page 1, Step 1, to correct your selections (click on "Select City & State" tab below).

Step 6. In the appropriate BUILDING TYPE and Bedroom (BR) categories below, enter the number of NEW UNITS in section 6(a), and/or REHABILITATION UNITS in section 6(b), proposed for funding under this application.

The Excel form will calculate totals for each unit type, and worksheet totals in section 6(c), based on City and State selected on page 1.
If you are completing this Attachment 9 manually, use the applicable TDC limits for each unit type found in HUD Notice PIH 2001-22.

Definitions

NEW UNITS include all on-site and off-site rental units that will receive public housing operating subsidy. Also include any homeownership units (including lease-purchase), that will be newly-constructed or acquired (with or without rehabilitation) utilizing any HOPE VI grant funds or other public housing capital assistance for development.

REHABILITATION UNITS include only existing public housing units that are proposed for rehabilitation utilizing HOPE VI grant funds or other public housing capital assistance.

Building Types

Detached buildings are single-family dwellings.
Semi-Detached buildings, also referred to as "duplex" units, are structures that include only two units.
Elevator buildings include only those structures with an elevator and four or more floors above ground.
Row House refers to any structure with three or more units that has only vertical common walls. If a building with three or more units has upper/lower units (and is not an elevator building), it is classified as a Walkup.
Walkup buildings include all structures with three or more units that are not classified as Elevator or Row House.

6(a) **NEW UNITS (new construction, and units to be acquired and rehabilitated)**

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Community Renewal Allowance Total	TDC Limit per Unit	TDC Limit Totals
Detached / Semi-Detached	1BR					$ 100,130	$ -
	2BR					$ 131,672	$ -
	3BR					$ 160,147	$ -
	4BR					$ 189,415	$ -
	5BR					$ 207,906	$ -
Elevator	1BR					$ 74,811	$ -
	2BR					$ 96,186	$ -
	3BR					$ 129,248	$ -
	4BR					$ 160,310	$ -
	5BR					$ 181,585	$ -
Row House	1BR					$ 89,548	$ -
	2BR					$ 117,117	$ -
	3BR					$ 141,958	$ -
	4BR					$ 167,557	$ -
	5BR					$ 183,440	$ -
Walkup	1BR					$ 72,375	$ -
	2BR					$ 92,014	$ -
	3BR					$ 120,959	$ -
	4BR					$ 148,517	$ -
	5BR					$ 168,319	$ -

Subtotal New Units: 0

6(b) **REHABILITATION UNITS (existing public housing units to be rehabilitated)***

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Comm Renewal Allowance Total	TDC Limit per Unit*	TDC Limit Totals
Detached / Semi-Detached	1BR					$ 90,117	$ -
	2BR					$ 118,685	$ -
	3BR					$ 144,132	$ -
	4BR					$ 170,474	$ -
	5BR					$ 187,116	$ -
Elevator	1BR					$ 67,330	$ -
	2BR					$ 86,568	$ -
	3BR					$ 115,423	$ -
	4BR					$ 144,279	$ -
	5BR					$ 163,516	$ -
Row House	1BR					$ 80,593	$ -
	2BR					$ 105,406	$ -
	3BR					$ 127,763	$ -
	4BR					$ 150,802	$ -
	5BR					$ 165,096	$ -
Walkup	1BR					$ 65,137	$ -
	2BR					$ 82,812	$ -
	3BR					$ 108,945	$ -
	4BR					$ 133,665	$ -
	5BR					$ 151,487	$ -

Subtotal Rehab Units: 0

6(c) **Totals for all New and Rehabilitation Units** 0 $ -

* Rehabilitation Units are eligible for 90% of the TDC limit. If the project unit configuration (number of units or bedrooms) will change due to rehabilitation activities, use the number of units and bedroom sizes after rehabilitation, not the unit configuration before rehabilitation.

Attachment 9:
TDC/Grant Limitations Worksheet

COMPLETE THIS WORKSHEET LAST

Page 3

To determine the maximum grant amount that may be requested in this HOPE VI revitalization application, enter the requested information. If you are using the Excel form, totals are calculated automatically.
If you are manually calculating the maximum grant amount that may be requested on this Attachment 9, follow the calculation instructions provided below on this worksheet.

6(d) TDC limit, unadjusted (entered automatically from "TDC Limit Calculation") $ -
(To calculate manually, enter the TDC Limit Total for all New and Rehabilitation Units from 6(c), page 2)

Step 7. Enter HOPE VI request for CSS funding. $ -
(from Attachment 7, Sources and Uses Budget)
(Note: request for HOPE VI Community and Supportive Services (CSS) funding may not exceed 15% of total grant requested, and amounts above 5% of grant must be matched by other sources.)

Step 8. Enter HOPE VI funds requested for demolition and remediation of dwelling units. $ -
(Enter the combined total of the dwelling unit remediation and dwelling unit demolition line items from Attachment 7, Sources and Uses Budget)

Step 9. Enter number of PH units to be demolished (after date of application only).

Step 10. Enter number of PH units to be built back on the original site. (-)
(Do not include existing public housing units to be rehabilitated)

10(a) Number of PH units to be demolished and not replaced back on original site -
(Number of units identified in Step 9, minus the number of units identified in Step 10)

10(b) Percent of original PH units to be demolished and not replaced back on original site - %
(Number of units identified in 10(a), divided by number of units identified in Step 9)
Example: Step 9 = 100 units to be demolished. Step 10 = 40 PH units to be built back on original site. 10(a) = 60 units demolished and not built back on original site. 10(b) = 60/100 = 60%

10(c) Demo/abatement costs attributable to units to be demolished and not replaced on orig. site $ -
(Dollar amount identified in Step 8, multiplied by percentage identified in 10(b))

Step 11. Enter HOPE VI request for "extraordinary site costs" (certified by architect or engineer). $ -

11(a) Subtotal: TDC limit, adjusted (for CSS, abatement/demolition, and extraordinary site costs) $ -
(Total of amounts above: 6(d) + Step 7 + 10(c) + Step 11)

Step 12. Enter all other HUD PH capital assistance proposed for HOPE VI development activities. ($ -)
(Include any project funds from the following sources: Public Housing Capital Funds or Mod funds (e.g., CIAP or CGP funds); Public Housing Development grants; previously-awarded HOPE VI demolition-only grants; and any borrowed funds secured by Capital Funds (from Attachment 7, Sources and Uses Budget))

12(a) Subtotal: Adjusted maximum allowable grant, after accounting for additional capital assistance $ -
(Total of Subtotal in 11(a), minus amount identified in Step 12)

12(b) Maximum allowable HOPE VI Revitalization Grant $20,000,000
(In accordance with provisions of the HUD 2002 HOPE VI Notice of Funding Availability)

12(c) **Maximum allowable 2002 HOPE VI revitalization grant request** $ -
(The lesser of 12(a) (adjusted max. possible grant), and 12(b) ($20,000,000))

Step 13. Enter the amount of your 2002 HOPE VI Revitalization Grant Request $ -
(If different than maximum allowable grant request, above)

ATTACHMENT 10: EXTRAORDINARY SITE COSTS CERTIFICATION

I hereby certify that:

1. I am a licensed engineer _____ architect _____ (check one).

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. Extraordinary site costs may be incurred in the revitalization and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint should be included in normal demolition costs where such items are found within the structures themselves. An example of extraordinary lead-based paint would be where the lead has leached into the soil and extraordinary measures are needed to remove the lead.

4. I have reviewed the attached description of the extraordinary site costs requested by the applicant Housing Authority identified below, and affirm that these costs qualify as extraordinary site costs (as that term is defined in Paragraph 3 above) and that the costs are justified and reasonable in light of my assessment of the site of the severely distressed project and the work proposed to be completed at that site.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Required Attachment: Description and itemized listing of extraordinary site costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

ATTACHMENT 16: CERTIFICATION OF SEVERE PHYSICAL DISTRESS

I hereby certify that:

1. I am a licensed engineer _____ architect _____ (check one).

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. The public housing development listed below meets (in the manner described in either subparagraph (A) or (B) below) the following definition of severe physical distress:

   Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project

check one:

A. _____ The development currently meets the above definition of severe physical distress; or

B. _____ The development has been legally demolished and HUD has not yet provided replacement housing assistance, other than tenant-based assistance, for the demolished units. However, the development satisfied the definition of severe physical distress (as defined above) as of the day the demolition was approved by HUD.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

Attachment 19: *Physical Development Resources*

List all funds that will be used for Physical Development only. For each resource you list, you must provide a commitment document behind this Attachment that meets the standards described in the match and leveraging section of the NOFA. The amounts listed on this form must be consistent with the amounts listed on Attachment 7 (Sources & Uses) and the amounts in each resource commitment document.

Source of Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Approved Amount
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

Attachment 20: *Community and Supportive Services Resources*

List all funds or services that will be used for Community and Supportive Services only. For each resource you list, you must provide a commitment document behind this attachment that meets the standards described the match and leveraging section of the NOFA. The amounts listed on this form must be consistent with the amounts listed on Attachment 7 (Sources & Uses) and the amounts in each resource commitment document.

Source of CSS Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

Attachment 21: *Anticipatory Resources*

List any anticipatory resources as described in the NOFA. For each resource, attach a letter certifying the expenditures incurred. Anticipatory resources cannot be counted as match and cannot be listed on Attachments 19, 20, or 22.

Source of Anticipatory Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
	$		$
Page Total	$		$

Page ____ of ____

Attachment 22: *Collateral Investment Resources*

List any funds or services that will be used for Collateral Investments only, as described in the NOFA. For each resource you list, attach a letter verifying the value of the collateral investment by the appropriate official (not the PHA). Collateral investment resources cannot be counted as match and cannot be listed on Attachments 19, 20, or 21.

Source of Collateral Investment Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

ATTACHMENT 23: RESIDENT TRAINING AND PUBLIC MEETING CERTIFICATION

I hereby certify, on behalf of the Public Housing Authority identified below, that a Resident Training Session on the HOPE VI development process was held in accordance with the requirements of Section VII(A)(2) of the HOPE VI NOFA.

Date of HOPE VI Resident Training Session: _____

I hereby certify, on behalf of the Public Housing Authority identified below, that at least three Public Meetings were held in accordance with the requirements of Section VII(A)(3) of the HOPE VI NOFA.

Dates of Public Meetings:

#1_____

#2_____

#3_____

#4_____

#5_____

Name of Executive Director: _____

Signature: _____
Date

Name of PHA: _____

Development Name: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

ATTACHMENT 31: PROJECT READINESS

I hereby certify, on behalf of the Public Housing Authority identified below, that the activities checked below have been completed in accordance with Section XII(B)(4) of the NOFA.

_____ The targeted severely distressed public housing project is completely vacant.

_____ The targeted severely distressed public housing site is cleared.

_____ A Master Development Agreement has been developed and is ready to submit to HUD.

_____ The preliminary site design is complete.

_____ The PHA has held 5 or more public planning sessions (including resident training sessions and public meetings) leading to resident acceptance of the Plan. No more than three of these meetings may be the same as those certified to in Attachment 23. The dates of those meetings are as follows:

#1_____

#2_____

#3_____

#4_____

#5_____

Name of Executive Director: _____

Signature: _____
Date

Name of PHA: _____

Development Name: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

HOPE VI REVITALIZATION
APPLICANT CERTIFICATIONS

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application of which this document is a part and make the following certifications to and agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with Section 24(j)(2) of the United States Housing Act of 1937 ("1937Act").

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a pay-back plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501).

If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with Section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.11 2(b), (d), (e), and (g)-(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under Section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601-19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 et seq.) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under Section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); and Section 18 of the 1937 Act as amended (disposition).

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and Section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A-87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

Name of Housing Authority: _____

Attested By: Board Chairman's Name _____

Board Chairman's Signature: _____

Date: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001,1010,1012, 32 U.S.C. 3729,3802)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 06/30/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (Include area code): ( ) -	2. Social Security Number or Employer ID Number: - -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ Yes ☐ No.

If you answered "No" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(Note: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature: X	Date: (mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

   Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

   The following information must be provided:

   1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
   2. State the type of other government assistance (e.g., loan, grant, loan insurance).
   3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
   4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1998, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

HOPE VI Demolition Grant Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

HA Code ☐☐---☐☐☐

PHA Fax Number ☐☐☐---☐☐☐---☐☐☐☐

Development Name _____

Amount Requested $ ☐☐,☐☐☐.☐☐☐

To Be Completed by HUD

☐ HUD received your application by the deadline.

Date received (mm/dd/yyyy) _____

Ordinal _____

Application Number _____

☐ Your application has been screened and no deficiencies have been identified.

☐ Your application has been screened and a deficiency has been identified. Please see the attached letter and/or checklist.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration.

form HUD-2993-A (02/2001)

[FR Doc. 03–26476 Filed 10–16–03; 12:46 pm]

BILLING CODE 4210–33–C

Federal Register

Tuesday,
October 21, 2003

Part IV

The President

Presidential Determination No. 2003–39 of September 16, 2003—Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Federal Register
Vol. 68, No. 203
Tuesday, October 21, 2003

Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–39 of September 16, 2003

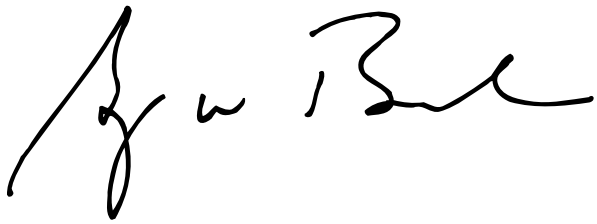
Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, the subject of litigation in *Kasza v. Browner* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning the operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 16, 2003.

[FR Doc. 03–26704
Filed 10–20–03; 10:07 am]
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- DOD commercial air carrier evaluators; credentials
  - Correction; published 10-21-03

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- Boeing; published 10-6-03
- Cessna; published 10-17-03

Standard instrument approach procedures; published 10-21-03

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- Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; published 8-22-03

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- Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; published 8-22-03

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AGRICULTURE DEPARTMENT

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- Program review; comments due by 10-27-03; published 8-26-03 [FR 03-21788]

AGRICULTURE DEPARTMENT

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- Ruminants; privately owned quarantine facilities standards; comments due by 10-27-03; published 8-28-03 [FR 03-21857]

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- Maximum excess shelter expense deduction; benefits adjustment; comments due by 10-28-03; published 8-29-03 [FR 03-22144]

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- BE-15; annual survey of foreign direct investment in U.S.; comments due by 10-28-03; published 8-29-03 [FR 03-22074]
- BE-85; quarterly survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 10-28-03; published 8-29-03 [FR 03-22140]

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- Northeastern United States fisheries—
  - Atlantic surfclam and ocean quahog; comments due by 10-27-03; published 9-25-03 [FR 03-24250]
- West Coast States and Western Pacific fisheries—
  - Northern Mariana Islands Exclusive Economic Zone; bottomfish fishery resources; comments due by 10-27-03; published 9-23-03 [FR 03-24115]

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- Share-in-savings contracting; comments due by 10-31-03; published 10-1-03 [FR 03-24855]
- Unique contract and order identifier numbers; comments due by 10-31-03; published 10-1-03 [FR 03-24584]

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- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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  - Ohio; comments due by 10-30-03; published 9-30-03 [FR 03-24776]

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- California; comments due by 10-29-03; published 9-29-03 [FR 03-24558]
- Texas; comments due by 10-30-03; published 9-30-03 [FR 03-24553]

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  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

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- Diflubenzuron; comments due by 10-27-03; published 8-27-03 [FR 03-21935]
- Flumioxazin; comments due by 10-27-03; published 8-27-03 [FR 03-21662]
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  - National priorities list update; comments due by 10-27-03; published 9-26-03 [FR 03-24410]
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- Illinois; comments due by 10-30-03; published 10-2-03 [FR 03-24940]
- Indiana; comments due by 10-27-03; published 10-2-03 [FR 03-24939]
- Texas; comments due by 10-30-03; published 9-19-03 [FR 03-23926]

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- Share-in-savings contracting; comments due by 10-31-

03; published 10-1-03 [FR 03-24855]

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HEALTH AND HUMAN SERVICES DEPARTMENT

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2152/P.L. 108–99

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

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