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Contents

Federal Register

Vol. 69, No. 81

Tuesday, April 27, 2004

Agriculture Department
See Food and Nutrition Service
See Forest Service

Air Force Department
NOTICES
Privacy Act:
Systems of records; correction, 22904

Arctic Research Commission
NOTICES
Meetings; Sunshine Act, 22759–22760

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Humanitarian and war-related public health and information management program, 22803–22806
Influenza surveillance networks development, 22806–22810
Tuberculosis and multi-drug resistant tuberculosis diagnosis and treatment in the Philippines, 22810–22811

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22811
Grants and cooperative agreements; availability, etc.:
Child Care Bureau Research Scholars, 22811–22819
Infant Adoption Awareness Training Program, 22819–22829
Street Outreach Program (2004 FY), 22829–22838
Train the trainers; Results Oriented Management and Accountability (ROMA) program; implementation, 22838–22846

Coast Guard
RULES
Drawbridge operations:
Illinois, 22733–22734
PROPOSED RULES
Drawbridge operations:
Massachusetts, 22749–22751
Ports and waterways safety:
Cape Fear River, Military Ocean Terminal Sunny Point, NC; security zone, 22751–22753
New York fireworks displays; safety zones, 22753–22756

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Sri Lanka, 22770–22771

Defense Department
See Air Force Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22771

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22771–22772
Vocational and adult education:
National Research Centers; project period extension and waivers, 22772–22774

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act—
National Emergency Grant programs, 23051–23081

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Hydrogen Fuel Initiative; basic research projects, 22774–22779

Environmental Protection Agency
NOTICES
Committees; establishment, renewal, termination, etc.:
Science Advisory Board, 22791
Meetings:
Science Advisory Board, 22791–22792
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 22792–22797
Water pollution control:
Clean Water Act—
Class II administrative penalty assessments, 22797–22800

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Boeing Model 777 series airplane, 22720–22730
Cessna Model 525B-CJ3 airplane, 22717–22720
Class B airspace, 22730–22732
Rulemaking petitions:
Colo Void Clause Coalition; antenna systems co-location, best voluntary practices, 22732–22733
PROPOSED RULES
Airworthiness directives:
Dassault, 22745–22748
Empresa Brasileria de Aeronautica S.A. (EMBRAER), 22743–22745
NOTICES
Aeronautical land-use assurance; waivers:
Manassas Regional Airport, VA, 22899
Passenger facility charges; applications, etc.:
Greater Rochester International Airport, NY, 22899

Rhinelander-Oneida County Airport, WI, 22899–22900

Federal Communications Commission
RULES
Radio stations; table of assignments:
Various States
CFR correction, 22734
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22800–22803
Rulemaking proceedings; petitions filed, granted, denied, etc., 22803

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 22783–22786
Environmental statements; notice of intent:
BP Crown Landing, LLC and Texas Eastern Transmission, LP, 22786–22788
SAF Hydroelectric, LLC, 22788–22789
Hydroelectric applications, 22789–22790
Meetings:
Standards of conduct for transmission providers; technical conference, 22790–22791
Weaver's Cove Energy L.L.C. and Mill River Pipeline L.L.C.; technical conference and site visit, 22791
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 22779
CenterPoint Energy Gas Transmission Co., 22780
CenterPoint Energy-Mississippi River Transmission Corp., 22779
Dauphin Island Gathering Partners, 22780
Dominion Cove Point LNG, LP, 22780
El Paso Natural Gas Co., 22781
Gas Transmission Northwest Corp., 22781
Gulf South Pipeline Co., LP, 22781
Haviland Holdings, Inc., et al., 22782
Midwest Hydro, Inc., 22782
Northern Natural Gas Co., et al., 22782
Texas Eastern Transmission, LP, 22782–22783

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 22803

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22902–22903

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Riverside fairy shrimp, 23023–23049

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
User fee rates for products (FY 2004) and payment procedures; establishment, 22846–22849
Organization, functions, and authority delegations:
Food and Drugs Commissioner, 22849

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22758–22759

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Siskiyou County, 22759

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Geriatric Academic Career Awards program, 22849

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22863–22866
Environmental statements; availability, etc.:
Manhattan, New York, NY; World Trade Center memorial and redevelopment plan, 22866–22868

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Middletown Rancheria of Pomo Indians, NM, 22868–22870

Indian Health Service
NOTICES
Grants and cooperative agreement awards:
Indian Health Scholarship Program; recipients list, 22849–22857
Grants and cooperative agreements; availability, etc.:
Tribal Management Program, 22857–22863

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service

International Trade Administration
NOTICES
Antidumping:
Honey from—
China, 22760–22761
Hot-rolled carbon steel flat products from—
India, 22761
Pasta from—
Italy, 22761–22763
Stainless steel butt-weld pipe fittings from—
Taiwan, 22763
Countervailing duties:
Carbazole violet pigment 23 from—
India, 22763–22769

Justice Department
NOTICES
Privacy Act:
Systems of records, 22872–22874

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
RULES
Acquisition regulations:
Revision, 22989–23021

Land Management Bureau
NOTICES
Oil and gas leases:
Alaska, 22870–22871

Minerals Management Service
NOTICES
Royalty management:
Indian gas production in designated areas not associated with index zones; additional royalty payments; major portion prices and due date, 22871–22872

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Minority Business Resource Advisory Committee, 22874

National Foundation on the Arts and the Humanities
NOTICES
Meetings; Sunshine Act, 22874–22875

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Multispecies fishery, 22905–22988
Spiny dogfish, 22734–22736
NOTICES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Crab fisheries quota-based program proposed catch-monitoring standards; public workshop, 22769–22770

National Science Foundation
NOTICES
Meetings; Sunshine Act, 22875

Nuclear Regulatory Commission
PROPOSED RULES
Public records:
Predisclosure notification to submitters of confidential information, 22737–22743
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22875
Meetings; Sunshine Act, 22876–22877
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 22877–22890
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 22875–22876

Occupational Safety and Health Administration
PROPOSED RULES
Construction safety and health standards:
Crane and Derrick Negotiated Rulemaking Advisory Committee—
Meetings, 22748–22749

Pension Benefit Guaranty Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22890

Presidential Documents
PROCLAMATIONS
Special observances
Jewish Heritage Week (Proc. 7775), 23083–23086

Public Debt Bureau
See Fiscal Service

Railroad Retirement Board
NOTICES
Privacy Act:
Systems of records, 22890–22891

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 22900–22901

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22892
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 22893–22896
Applications, hearings, determinations, etc.:
FiberMark, Inc., 22892
Holly Corp., 22892–22893
Iris International, Inc., 22893

Small Business Administration
NOTICES
Intergovernmental review of agency programs and activities, 22897

State Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Cultural Property Advisory Committee, 22898
Meetings:
Shipping Coordinating Committee, 22898–22899

Surface Transportation Board
NOTICES
Railroad services abandonment:
Mississippi Tennessee Holdings, LLC et al., 22901–22902
Norfolk Southern Railway Co., 22902

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service

Veterans Affairs Department
PROPOSED RULES
Disabilities rating schedule:
Musculoskeletal system; withdrawn, 22757

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 22905–22988

Part III
Labor Department, 22989–23021

Part IV
Interior Department, Fish and Wildlife Service, 23023–23049

Part V
Labor Department, Employment and Training Administration, 23051–23081

Part VI
Executive Office of the President, Presidential Documents 23083–23086

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7775 23085

10 CFR

Proposed Rules:

9 22737

14 CFR

23 22717
25 22720
71 22730
77 22732

Proposed Rules:

39 (2 documents) 22743, 22745

29 CFR

Proposed Rules:

1926 22748

33 CFR

117 22733

Proposed Rules:

117 22749
165 (2 documents) 22751, 22753

38 CFR

Proposed Rules:

3 22757
4 22757

47 CFR

73 22734

48 CFR

2901 22990
2902 22990
2903 22990
2904 22990
2905 22990
2906 22990
2907 22990
2908 22990
2909 22990
2910 22990
2911 22990
2912 22990
2913 22990
2914 22990
2915 22990
2916 22990
2917 22990
2918 22990
2919 22990
2920 22990
2921 22990
2922 22990
2923 22990
2924 22990
2925 22990
2926 22990
2927 22990
2928 22990
2929 22990
2930 22990
2931 22990
2932 22990
2933 22990
2934 22990
2935 22990
2936 22990
2937 22990
2938 22990
2939 22990
2940 22990
2941 22990
2942 22990
2943 22990
2944 22990
2945 22990
2946 22990
2947 22990
2948 22990
2949 22990
2950 22990
2951 22990
2952 22990
2953 22990

50 CFR

648 (2 documents) 22734, 22906

Proposed Rules:

17 23024

Rules and Regulations

Federal Register
Vol. 69, No. 81
Tuesday, April 27, 2004

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE205; Special Conditions No. 23–145–SC]

Special Conditions: Cessna Aircraft Company, Model 525B–CJ3 Airplane; Flight Performance, Flight Characteristics, and Operating Limitations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, Model 525B–CJ3 airplane. This airplane will have a novel or unusual design feature(s) associated with turbofan engines, engine location, and certain performance characteristics necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is April 16, 2004. Comments must be received on or before May 27, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE205, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE205. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4125, fax 816–329–4090.

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE205.'' The postcard will be date stamped and returned to the commenter.

Background

On August 4, 2003, Cessna Aircraft Company applied for a type certificate for their new Model 525B. The Model No. 525B is a derivative of the Model 525A and is a commuter category airplane with unique turbofan engines, engine location, and certain performance characteristics necessary for this type of airplane.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.17, Cessna Aircraft Company must show that the Model 525B meets the applicable provisions of part 23, as amended by Amendment 23–1 through 23–54 thereto. If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR, part 23) do not contain adequate or appropriate safety standards for the Cessna Model 525B because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cessna Model 525B will incorporate the following novel or unusual design features: Two aft mounted Williams International FJ44–3A turbofan engines rated at 2,780 pounds of thrust with a Full Authority Digital Engine Control (FADEC) system and other performance characteristics that were not envisioned by the regulations when the Model 525 was originally certificated.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 525B. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the

applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Model 525B airplanes.

1. SC 23.51, Takeoff Speeds

Instead of compliance with § 23.51, the following apply:

(a) V_1 must be established in relation to V_{EF} as follows:

(1) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under § 23.149(f).

(2) V_1, in terms of calibrated airspeed, is the takeoff decision speed selected by the applicant; however, V_I may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine fails and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) V_2 min, in terms of calibrated airspeed, may not be less than—

(1) 1.2 V_{S1};

(2) 1.10 times V_{MC} established under § 23.149.

(c) V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by special condition SC 23.67, but it may not be less than—

(1) V_2 min; and

(2) V_R plus the speed increment attained (in accordance with § 23.57) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the calibrated airspeed at, and above, which the airplane can safely lift off the ground and continue the takeoff. V_{MU} speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of calibrated airspeed, must be selected in accordance with the conditions of subparagraphs (1) through (4) of this section.

(1) V_R may not be less than—

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed (determined in accordance with § 23.57(c)(2)) that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of V_R, obtained in accordance with this section, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with subparagraphs (1) and (2) of this section, does not exceed the corresponding one engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with § 23.59(a)(2).

(4) Reasonably expected variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with § 23.59.

(f) V_{LOF} is the calibrated airspeed at which the airplane first becomes airborne.

2. SC 23.63, Climb: General

Instead of compliance with § 23.63(a) and § 23.63(d)(1), the following apply:

(a) Compliance with the requirements of § 23.65, § 23.66, § 23.67, special condition SC 23.67, § 23.69, and § 23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of § 23.1041 to § 23.1047 has been demonstrated; and

(3) Unless otherwise specified, with one engine inoperative, at a bank angle not exceeding 5 degrees.

(d)(1) Sections 23.67(c)(1), 23.67(c)(3), and special condition SC 23.67 for takeoff; and

3. SC 23.67, Climb: One Engine Inoperative

Instead of compliance with § 23.67(c)(2), the following applies:

(c)(2) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in § 23.57 without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2, and with—

(i) The critical engine inoperative;

(ii) The remaining engine at the takeoff thrust available at the time the landing gear is fully retracted, determined under § 23.57, unless there is a more critical power operating condition existing along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and;

(iii) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under § 23.57.

4. SC 23.149, Minimum Control Speed

(d) The requirement to comply with § 23.149(d) is deleted.

(f) The requirement to comply with § 23.149(f) is not optional to the applicant, but is required to show compliance with special condition SC 23.51.

5. SC 23.161, Trim

In addition to the requirements of § 23.161(c), the airplane must maintain longitudinal trim during the following:

(c)(1) A climb with—

(iii) Maximum continuous power at a speed not more than 1.4 V_{S1}, with the landing gear retracted, and the flaps retracted, and

(iv) Maximum continuous power at a speed not more than 1.4 V_{S1}, with the landing gear retracted, and the flaps in the takeoff position(s).

6. SC 23.173, Static Longitudinal Stability

Instead of compliance with § 23.173(c), the following applies:

(c) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots of calibrated airspeed.

7. SC 23.177, Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and for any symmetrical power condition at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE} or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_{FE} or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{S1} to V_{MO}/M_{MO};

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC} unless the Administrator finds the divergence is—

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movements and forces must be substantially proportional to the angle of the sideslip. The factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough banks accompanying side slipping to clearly indicate any departure from steady unyawed flight.

8. SC 23.201, Wings Level Stall

Instead of compliance with § 23.201(d) and (e), the following apply:

(d) During the entry into and the recovery from the maneuver, it must be possible to prevent more than approximately 20 degrees of roll and approximately 15 degrees of yaw by the normal use of the controls.

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speed brakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

(5) The most adverse center of gravity for recovery.

9. SC 23.203, Turning Flight and Accelerated Turning Stalls

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speed brakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

(5) The most adverse center of gravity for recovery.

10. SC 23.251, Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be demonstrated in flight to be free from any vibration and buffeting that would prevent continued safe flight in any likely operating condition.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration under any appropriate speed and thrust conditions up to V_{DF}/M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition SC 23.1505.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

11. SC 23.253, High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO}, without—

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D or V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and

readily controllable, using normal piloting techniques.

(b) *Maximum speed for stability characteristics,* V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(2), special condition SC 23.177, and § 23.181 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

12. SC 23.1505, Airspeed Limitations

Instead of compliance with § 23.1505, the following applies:

The maximum operating limit speed (V_{MO}/M_{MO}-airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary in the flight test conducted under special condition SC 23.253.

13. SC 23.1545, Airspeed Indicator

Instead of compliance with § 23.1545, the following applies:

The following markings must be made on each airspeed indicator:

A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane.

14. SC 23.1583, Operating Limitations

Instead of compliance with § 23.1583(a)(1), (a)(2), and (c)(4)(i) respectively, the following apply:

(a)(1) Information necessary for the marking of the airspeed limits on the airspeed indicator as required in special condition SC 23.1545, and the significance of each of those limits and of the color-coding used on the airspeed indicator.

(a)(2) The speeds V_{MC}, V_O, V_{LE}, V_{FE}, V_{LO}, if established, and their significance.

(c)(4)(i) The airplane complies with the requirements of special condition SC 23.63; and

15. SC 23.1585, Operating procedures

(c)(3) The requirement to comply with § 23.1585(c)(3) is deleted.

Issued in Kansas City, Missouri on April 16, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9514 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM273; Special Conditions No. 25–260–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Overhead Crew Rest Compartment Occupiable During Taxi, Take-off, and Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 777 series airplanes. These airplanes will have novel or unusual design features because of the installation of an overhead crew rest compartment that will be occupiable during taxi, takeoff, and landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 2002, the Boeing Commercial Airplane Group (BCAG), P. O. Box 3707, Seattle, Washington, 98124, applied for a change to Type Certificate No. T00001SE to install an overhead crew rest (OHCR) compartment, in Boeing Model 777 series airplanes. The OHCR compartment will be occupiable during taxi, takeoff, and landing (TT&L). The Boeing Model 777 series airplanes are large, twin-engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OHCR compartment is located in the overhead space above the main passenger cabin immediately aft of the first pair of main deck emergency exits (Door 1) and includes a maximum of two private berths and two seats. Occupancy of the OHCR compartment will be limited to a maximum of four crewmembers during flight and two flight crewmembers, one in each seat, during TT&L.

The OHCR compartment will be accessed from the main deck by stairs through a vestibule. In addition, a secondary evacuation route, which opens directly into the main passenger seating area, will be available from the OHCR compartment as an alternate route for evacuating occupants of the OHCR compartment. A smoke detection system and an oxygen system will be provided in the compartment. Other optional features, such as a sink with cold drink stowage or a lavatory, may be provided as well.

While the installation of an OHCR compartment is not a new concept for large transport category airplanes, each OHCR compartment has unique features based on design, location, and use on the airplane. Previously, OHCR compartments have been installed and certified in Boeing Model 777 series airplanes in the main passenger seating area, in the overhead compartment above the main passenger seating area, and below the passenger seating area within the cargo compartment. On April 9, 2003, the FAA issued Special Conditions No. 25–230–SC for an OHCR compartment immediately aft of the Door 1 exits, and an overhead flight attendant rest compartment adjacent to Door 3 in Boeing Model 777 series airplanes. These new special conditions address an OHCR compartment at the same location aft of Door 1 as in the April 2003 special conditions, except that they address occupancy by trained flightcrew during TT&L.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Boeing Commercial Airplane Group must show that Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations

in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The U.S. type certification basis for Boeing Model 777 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certificate application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that installation of the OHCR compartment creates a small compartment volume within the large overhead volume of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g) (regarding the effects of sudden decompression) for the OHCR compartment, as well as any other airplane compartment whose decompression characteristics are affected by the installation of an OHCR compartment. Compliance with § 25.831 (regarding ventilation) must be demonstrated for all phases of flight where occupants will be present.

Novel or Unusual Design Features

This OHCR compartment is unique to part 25 due to its design, location, and use on the airplane. This OHCR compartment is particularly unique in that it is in the overhead area of the passenger compartment and will be occupied by trained flightcrew during TT&L.

Due to the novel or unusual features associated with the installation of this OHCR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate. These special conditions do not negate the need to address other applicable part 25 regulations.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–04–01–SC for the Boeing Model 777 series airplanes, was published in the **Federal Register** on February 6, 2004 (69 FR 5747)). One commenter, Boeing Commercial Airplane Group, responded to the notice.

Comment: Boeing states that occupancy of the OHCR compartment during TT&L should not be limited to flight crewmembers, but should also include other crewmembers, such as flight attendants.

FAA Reply: Prior to issuance of Notice 25–04–01–SC, Boeing proposed to limit occupancy of the OHCR compartment during TT&L to flight crewmembers only. Hence, public comment was requested based on this limitation. Allowing other crewmembers to occupy the OHCR compartment during TT&L is considered beyond the scope of Notice No. 25–04–01–SC and should be addressed by separate notice.

Comment: Special Condition No. 1(a)(2) restricts occupancy of the OHCR compartment to crewmembers the pilot in command has determined are trained in the ''evacuation procedures'' for the OHCR compartment. Boeing proposes revising ''evacuation procedures'' to ''emergency procedures.''

FAA Reply: We concur with this proposal since occupants of the OHCR compartment must be trained in not only evacuation of the OHCR compartment, but also other emergency procedures (fire fighting, depressurization). Special Condition No. 1(a)(2) and other associated text in this document have been revised to address this comment.

Comment: Special Condition 4 requires that there be at least two emergency evacuation routes that could be used by ''each occupant'' of the OHCR compartment to rapidly evacuate to the main cabin. Boeing proposes to change the words ''each occupant'' to ''any occupant.''

FAA Reply: We do not agree with this change. The proposed wording would allow the evacuation routes to be designed to be used by any particular crewmember who may occupy the OHCR compartment. For example, compliance with the commenter's proposed wording could be found with two emergency evacuation routes designed for use by a 5th percentile female occupant only. However, the emergency evacuation routes should be designed to also provide rapid means of escape for persons of larger size. The FAA proposed wording is based on the wording of § 25.819(a) and is considered appropriate.

Comment: Boeing proposes to refer to the emergency evacuation routes of Special Condition No. 4 as ''evacuation routes'' and not ''emergency evacuation routes.''

FAA Reply: We do not agree with this change. The term ''emergency evacuation route'' is based on the wording in § 25.819 and is considered appropriate.

Comment: Boeing proposes deleting the last sentence in Special Condition No. 13(b)(2) and placing a similar statement at the end of Special Condition No. 13. Boeing states that this would provide consistency with Special Conditions No. 25–230–SC and would provide clarity as to how the fire fighting procedures should be transmitted and incorporated into the operators' training and operational manuals.

FAA Reply: Special Condition No. 13(a) is intended to address the requirements for a built-in extinguishing system. Paragraph (b) is intended to address the requirements for when manual fire fighting would be chosen, whether the manual system was designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited effective suppression duration, as addressed in paragraph (a)(2). We have therefore revised paragraph (b) to provide the needed clarification. Additionally, paragraph (b)(2) is made up of two requirements, which although complementary, could be separated without changing the intent. To provide the clarification suggested by Boeing, we have moved the last sentence of paragraph (b)(2) to a new paragraph (b)(4).

Comment: Boeing proposes to add wording to the preamble discussion of Special Condition No. 14 which implies that smoke penetration requirements are

not applicable during TT&L for the OHCR compartment.

FAA Reply: Smoke penetration requirements must be met during all phases of flight when the OHCR compartment door is closed. This door is required to be closed when the OHCR compartment is not occupied, even during TT&L. When the OHCR compartment is occupied during TT&L, the door must be open, and the smoke penetration requirements are not applicable. We consider the original preamble wording to be sufficient.

Comment: Boeing proposes changing the word ''decompression'' to ''depressurization'' in Special Condition No. 15.

FAA Reply: We agree and have made this change.

Comment: Boeing also proposes adding the following sentence to Special Condition No. 15: ''There must also be a limitation placed in the Airplane Flight Manual or other means requiring that crewmembers be trained in depressurization procedures.'' Boeing states that the addition of this sentence would ensure consistency within the special conditions concerning required training procedures and AFM limitations. Boeing further states that evacuation, fire fighting, and depressurization training are all required in order to occupy the OHCR compartment during taxi, takeoff and landing.

FAA Reply: The last two sentences of Special Condition No. 15 state that decompression procedures must be established and transmitted to the operators for incorporation into their training programs and appropriate operational manuals. Thus, the existing special conditions imply training is required. However, to provide further clarification, we have added the proposed sentence to the end of Special Condition No. 15.

Comment: Boeing proposes to delete wording in the preamble of Special Condition No. 20 that explains why the requirements of § 25.787(a) should apply to the OHCR compartment.

FAA Reply: We disagree. The current explanation provides clarity and should be retained in the preamble.

The commenter proposes several other nonsubstantive revisions to the proposed special conditions for clarity. We have incorporated these revisions where appropriate.

Operational Evaluations and Approval

These special conditions outline requirements for OHCR compartment design approvals (type design changes) administered by the FAA's Aircraft Certification Service. Prior to operational use of an OHCR compartment, the FAA's Flight Standards Service must evaluate and approve the ''basic suitability'' of the OHCR compartment for crew occupation. Additionally, if an operator wishes to use an OHCR compartment as ''sleeping quarters,'' the OHCR compartment must undergo an additional evaluation and approval (Reference 14 CFR 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

In order to obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of their crew rest compartment. The results of these evaluations should be documented in a 777 flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OHCR compartment configuration that affect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers or related emergency training will require re-evaluation and approval. The applicant for a crew rest compartment design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest compartment evaluation is required. The results of a re-evaluation should also be documented in a 777 FSB report appendix.

Procedures must be developed to ensure that a crewmember entering the OHCR compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas (if installed) for the source of the fire prior to entering the remaining areas of the OHCR compartment. These procedures are intended to ensure that the source of the fire is not between the crewmember and the entrance to the OHCR compartment. In the event a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OHCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, would not be between the firefighter and the OHCR compartment entrance. Procedures describing methods to search the OHCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Discussion of Rescue Crew Training Materials

The installation of an OHCR compartment that can be occupied during TT&L by flightcrew is unique. Appropriate information must be provided to airport fire rescue personnel so that they understand that this remote compartment may be occupied during an emergency landing. The applicant must provide rescue crew training materials to the FAA Airports Division, Safety and Standards Branch (ANM–620) to address this issue. The FAA Airports Division, Safety and Standards Branch, will ensure that the materials are distributed to appropriate airports, domestic and foreign. A special condition is not considered appropriate to address this issue.

Discussion of the Special Conditions

These special conditions establish seating, communication equipment, lighting, personal safety, and evacuation requirements for the OHCR compartment. In addition, passenger information signs and supplemental oxygen are required. Where applicable, the requirements parallel the existing requirements for a lower deck service compartment in § 25.819 and for an OHCR compartment not occupiable during TT&L in Special Conditions No. 25–230–SC, issued on April 9, 2003. These special conditions provide a level of safety equivalent to that provided for main deck occupants.

Consideration of a Requirement for an External Exit

The FAA has considered whether or not a special condition should require that the OHCR compartment have an external exit leading directly outside the airplane. In accordance with § 21.16, special conditions must provide flight crewmembers who occupy the OHCR compartment during TT&L with a level of safety equivalent to that established by part 25 for main deck occupants. We consider that the following, in addition to the other special conditions, provides this level of safety:

1. The distances along the evacuation routes from seats in the OHCR compartment to the Door 1 exits on the main deck are significantly shorter than the maximum distance a seated passenger on the main deck would need to travel to reach an exit.

2. Occupancy during TT&L will be limited to two flight crewmembers who are trained in the evacuation, fire fighting and depressurization procedures of the OHCR compartment. An airplane flight manual limitation must be established to restrict occupancy to only persons the pilot in command has determined are able to use both evacuation routes rapidly. The ability of such persons to fit through the escape hatch must be considered in this determination.

The Air Line Pilots Association, International (ALPA), and International Federation of Air Line Pilots (IFALPA) reviewed the Boeing OHCR compartment design and informed the FAA that in their opinion an external exit is not needed, because two independent, internal evacuation routes will be provided. ALPA and IFALPA provided this position to the FAA and Boeing in a meeting on January 7, 2003, and again to the FAA in letters dated February 20, 2003, and February 21, 2003. Since flight crewmembers will be the only occupants of the OHCR compartment during TT&L, this input provided further support in determining the acceptability of these special conditions, which do not include a requirement for an external exit.

As discussed in the background section, these special conditions address the same OHCR compartment as that addressed by Special Conditions No. 25–230–SC, except that these special conditions address occupancy of trained flightcrew during TT&L. Special Conditions No. 25–230–SC were developed based on occupancy during flight only for crewmembers in general (flight crewmembers and flight attendants). These special conditions also allow occupancy of flight crewmembers and flight attendants during flight. However, the applicant has requested that new special conditions be developed that would allow flight crewmembers to occupy the OHCR compartment during TT&L. The FAA has not considered the acceptability of any other occupants in the OHCR compartment during TT&L. These special conditions limit occupancy to crewmembers during flight and to flight crewmembers during TT&L.

Special Condition No. 1

Due to the location and configuration of the OHCR compartment, occupancy must be limited to a maximum of four crewmembers during flight and two flight crewmembers during TT&L. One factor which limits occupancy is the number of approved seats and berths provided in the OHCR compartment. During TT&L, occupancy must be restricted to flight crewmembers who the pilot in command has determined are able to use the evacuation routes rapidly and who are trained in the emergency procedures for the OHCR compartment. The FAA considers this requirement necessary to support a finding that the OHCR compartment will provide an equivalent level of safety to that provided by main deck seating. The special conditions also provides requirements for the installation of ashtrays and to prohibit smoking and the stowage of cargo or passenger baggage in the OHCR compartment.

Special Condition No. 2

This special condition specifies the requirements for door access and locking. It provides requirements similar to those in Special Conditions No. 25–230–SC for the OHCR compartment that is not occupiable during TT&L, and also provides requirements to prevent doors from obstructing an evacuation after an emergency landing.

Special Condition No. 3

Section 25.562 was established in recognition that some standard beyond the static conditions of § 25.561 was necessary to provide seats which are more resistant to the dynamic nature of emergency landing forces. The new standard achieves this within the capability of traditional main deck floor-type structure. Numerous tests were conducted to establish this standard. The results were the 16G forward and 14G combined down and forward dynamic tests, as documented in § 25.562. Since § 25.562 was developed based on the inherent capability of traditional main deck floor structure, certification testing of main deck floor-type structure was not required by § 25.562.

The OHCR compartment structure bears little similarity in physical characteristics to main deck floor structure. In keeping with the intent of § 25.562, this different structure must be analyzed or tested to demonstrate that it will function with capability similar to traditional main deck floor structure in an emergency landing event, retaining the seats and maintaining their attachments to the airplane. Therefore, the OHCR compartment structure must be demonstrated to be compatible with dynamic loads introduced by the seats, providing the same level of protection during an emergency landing event as that provided to those seated on traditional main deck floor structure. The applicant must propose, for FAA approval, means to analyze or test the OHCR compartment structure to demonstrate this capability.

Special Condition No. 4

This special condition refers to emergency evacuation routes and crew rest compartment outlets. A crew rest compartment outlet is an opening (for example, a door or hatch) between the OHCR compartment and the main passenger deck. An emergency evacuation route, as used in the context of this special condition, is an egress path that leads OHCR compartment occupants to crew rest compartment outlets and out of the compartment.

To preclude occupants from being trapped in the OHCR compartment in the event of an emergency, there must be at least two emergency evacuation routes that could be used by each occupant of the OHCR compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be used as one of the emergency evacuation routes or, alternatively, two other emergency evacuation routes must be provided.

The following clarifies the intent of Special Condition No. 4(b) concerning the utility of the egress routes. First, occupied passenger seats are not considered an impediment to the use of an egress route (if, for example, the egress route drops into one row of main deck seats by means of a hatch), provided that the seated occupants do not inhibit the opening of the egress route (the hatch in this example). Second, an egress route may use areas where normal movement or evacuation of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means opens into a main aisle, cross aisle, or galley complex, 95th percentile male passengers on the main deck must be considered. Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers cannot prevent occupants of the OHCR compartment from using the escape route.

Training requirements for the occupants of the OHCR compartment are included in these special conditions. Requirements to prevent passengers on the main deck from entering the OHCR compartment and requirements regarding door and hatch usability are also provided.

Special Conditions No. 25–230–SC has qualitative and quantitative criteria for determining that the evacuation routes have sufficient separation within the OHCR compartment. Those criteria have been incorporated into these special conditions to clarify how compliance can be shown with Special Condition No. 4(a).

Special Condition No. 5

This special condition requires a means for removing an incapacitated person from the OHCR compartment to the main deck. The design and procedures for such an evacuation must be demonstrated to be adequate for all evacuation routes. Limits would be imposed on the assistance that may be provided in evacuating an incapacitated person in these demonstrations.

Special Condition No. 6

Exit signs, placards for evacuation routes, and illumination for signs, placards, and door handles are required for the OHCR compartment. This special condition allows for use of exit signs with a reduced background. If a reduced background is used, the material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). These reduced background area signs have been allowed under previous equivalent level of safety findings for small transport executive jets.

Special Condition No. 7

An emergency lighting system is required to prevent the occupants from being isolated in a dark area due to loss of lighting in the OHCR compartment. The emergency lighting must be activated under the same conditions as the main deck emergency lighting system.

Special Condition No. 8

Two-way voice communications and public address speaker(s) are required and provisions to prevent occupants of the OHCR compartment from being disturbed by normal, non-emergency announcements made to the passenger cabin.

Special Condition No. 9

Means to notify occupants of the OHCR compartment of an emergency situation must be provided via an emergency alarm, use of the public address system, or a crew interphone system. Power to the emergency alarm system must be maintained for a specific duration after certain failures.

Special Condition No. 10

There must be a means, readily detectable by seated or standing occupants of the OHCR compartment, of indicating when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the OHCR compartment. It would not be essential that the sign be visible from every possible location in the OHCR compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Special Condition No. 11

The OHCR compartment, which is remotely located from the passenger cabin, must be equipped with the following:

- A hand-held fire extinguisher.
- Protective breathing equipment (PBE).
- A flashlight.

The following clarifies how this special condition should be understood relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.'' But the PBE requirements of § 25.1439(a) are not appropriate in this case, because the OHCR compartment is novel and unusual in terms of the number of occupants. In 1976, when Amendment 25–38 was adopted, underfloor galleys were the only isolated compartments that had been certificated, with a maximum of two crewmembers expected to occupy those galleys. This special condition addresses PBE requirements for OHCR compartments, which can accommodate up to 4 crewmembers. This number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, an occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all occupants of the OHCR compartment to don PBE. Taking the time to don the PBE would prolong the time for the occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire. Therefore, Special Condition No. 11 requires two PBE units, or one PBE for each handheld fire extinguisher, whichever is greater, for this OHCR compartment.

Special Condition No. 12

Because the OHCR compartment is remotely located from the main passenger cabin and will not always be occupied, a smoke detection system and appropriate warnings are required. The smoke detection system must be capable of detecting a fire within the OHCR compartment, including each area of the compartment created by the installation of a curtain or door.

Special Condition No. 13

This special condition originated from a concern that a fire in an unoccupied OHCR compartment could spread into the passenger compartment or affect other vital systems before it could be extinguished. This special condition requires either installation of a built-in fire suppression system or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire manually under the prescribed conditions. A built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration in which the crewmember is responding to the alarm. (Reference Special Condition No. 13(a) in general.)

This special condition also provides requirements for the use of a combination of the two methods of fighting a fire if the applicant so chooses. (Reference Special Condition No. 13(a)(2).)

Also, the OHCR compartment must be designed so that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for fire fighting to have unrestricted access to the compartment. (Reference Special Condition No. 13(b)(2).) The time for a crewmember on the main deck to react to the fire alarm, don firefighting equipment, and gain access must not exceed the time it would take for the OHCR compartment to become smoke filled, when it would be difficult to locate the fire source. (Reference Special Condition No. 13(b)(3).) (See additional information specified in Special Condition No. 14.)

The requirements for enabling crewmember(s) to quickly enter the OHCR compartment, locate a fire source (Reference Special Condition No. 13(b)), evacuate the compartment (Reference Special Condition No. 4), or evacuate an incapacitated person from the compartment (Reference Special

Condition No. 5), inherently places limits on the size of the OHCR compartment and the amount of baggage that may be stowed there. The OHCR compartment is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The OHCR compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis.'' In addition, the FAA considers failure of the OHCR compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with an OHCR compartment fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A).

Special Condition No. 14

Means must be provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OHCR compartment from entering any other compartment. The FAA accepts the fact that during the one-minute smoke detection time and during access to fight a fire, penetration of a small quantity of smoke from this OHCR compartment into an occupied area on this airplane configuration would be acceptable, based upon the limitations placed in this and other associated special conditions. (Reference Special Condition No.12(a), and Special Conditions No. 14(b), (c), (d) and (e)).

Special Condition No. 15

The oxygen equipment and a supplemental oxygen deployment warning for the OHCR compartment must be equivalent to that provided for main deck passengers.

Special Condition No. 16

This special condition specifies the requirements for a divided OHCR compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

Special Condition No. 17

If a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher.

Special Condition No. 18

Materials in the OHCR compartment must meet the flammability requirements of § 25.853 at Amendment 25–83. Seat cushions and mattresses must meet the fire blocking requirements of § 25.853(c).

Section 25.853(e) indicates that crew rest compartment quarters need not meet the standards of § 25.853(d), provided the interiors of these compartments are isolated from the main passenger cabin by doors or equivalent means that would normally be closed during an emergency landing. Since the OHCR compartment is occupiable during TT&L, the OHCR main entrance door must be latched open during TT&L, and hence, its interior must comply with § 25.853(d) in the manner consistent with the main passenger cabin.

Special Condition No. 19

This requirement is a reiteration of existing main deck lavatory requirements to provide clear applicability. OHCR compartment lavatories, if installed, must comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the OHCR compartment must also meet the requirements of Special Condition No. 12 for smoke detection due to placement within this remote area.

Special Condition No. 20

This special condition requires fire protection for stowage areas within an OHCR compartment as a function of size (compartment interior volume). The fire protection requirements for stowage compartments in the OHCR compartment are more stringent than those for stowage in the main passenger cabin, because the OHCR compartment is a remote area that can remain unoccupied for long periods of time, in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft^3, the safety objective of these requirements is to contain the fire. FAA research indicates that properly constructed compartments meeting the material requirements will prevent burnthrough. For stowage compartments greater than 25 ft^3 but less than 200 ft^3, the safety objective of these requirements is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The fire protection requirements are intended to provide a level of safety for the OHCR compartment equivalent to the level of safety established by existing regulations for the main cabin.

Section 25.787(a) requires each stowage compartment in the passenger cabin, except for underseat and overhead compartments for passenger convenience, to be completely enclosed. This requirement is not applicable to the flight deck so that flight crewmembers may quickly access items and better perform their duties. Occupants of the OHCR compartment will not be performing flight deck duties, and the FAA considers that stowage compartments in the OHCR compartment, except for under-seat compartments for occupant convenience, should be completely enclosed. This will provide occupants of the OHCR compartment a level of safety similar to that provided to main deck passengers. Note that typical literature pockets and magazine racks are not considered stowage compartments and, therefore, are not required to be completely enclosed by this special condition.

The addition of galley equipment or a kitchenette incorporating a heat source (cook tops, microwaves, coffee pots, *etc.*), other than a conventional lavatory or kitchenette hot water heater, within the OHCR compartment may require further special conditions to be considered. A hot water heater is acceptable without further special condition consideration.

Applicability

These special conditions are applicable to Boeing Model 777 series airplanes. Should the Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101.

Effective Date

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for a Boeing Model 777 series airplane with an OHCR compartment that is occupiable during TT&L by two flight crewmembers is

imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one airplane model. This is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777 series airplanes with an overhead crew rest compartment (OHCR) installed adjacent to or immediately aft of the first pair of exits (Door 1).

1. During flight, occupancy of the OHCR compartment is limited to the total number of bunks and seats installed in the compartment that are approved to the maximum flight loading conditions. During taxi, takeoff, and landing (TT&L), occupancy of the OHCR compartment is limited to the total number of installed seats approved to the flight and ground load conditions and emergency landing conditions. The OHCR compartment is limited to a maximum of four crewmembers during flight and two flight crewmembers during TT&L.

(a) There must be appropriate placards, inside and outside each entrance to the OHCR compartment to indicate:

(1) The maximum number of crewmembers allowed during flight and flight crewmembers allowed during TT&L.

(2) That occupancy is restricted to crewmembers who the pilot in command has determined are trained in the emergency procedures for the OHCR compartment and able to rapidly use the evacuation routes.

(3) That smoking is prohibited in the OHCR compartment.

(4) That stowage in the crew rest compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) There must be at least one ashtray on the inside and outside of any entrance to the OHCR compartment.

(c) A limitation in the Airplane Flight Manual must be established to restrict occupancy to crewmembers who the pilot in command has determined are trained in the emergency procedures for the OHCR compartment and are able to rapidly use the evacuation routes of the OHCR compartment.

2. The following requirements are applicable to crew rest compartment door(s):

(a) There must be a means for any door installed between the OHCR compartment and passenger cabin to be quickly opened from inside the OHCR compartment, even when crowding from an emergency evacuation occurs at each side of the door.

(b) Doors installed across emergency egress routes must have a means to latch them in the open position. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b).

(c) A placard must be displayed in a conspicuous place on the outside of the entrance door of the OHCR compartment and any other door(s) installed across emergency egress routes of the OHCR compartment, that requires these doors to be latched open during TT&L when the OHCR compartment is occupied. This requirement does not apply to emergency escape hatches installed in the floor of the OHCR compartment. A placard must be displayed in a conspicuous place on the outside of the entrance door to the OHCR compartment that requires it to be closed and locked when it is not occupied. Procedures for meeting these requirements must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) For all doors installed in the OHCR compartment, there must be a means to preclude anyone from being trapped inside the OHCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of a key or other special tools. The lock must not prevent opening from the inside of the OHCR compartment at any time.

3. In addition to the requirements of § 25.562 for seats, which are occupiable during takeoff and landing, and restraint systems, the OHCR compartment structure must be compatible with the loads imposed by the seats as a result of the conditions specified in § 25.562(b).

4. There must be at least two emergency evacuation routes that could be used by each occupant of the OHCR compartment to rapidly evacuate to the main cabin. In addition—

(a) The routes must be located with sufficient separation within the OHCR compartment to minimize the possibility of an event either inside or outside of the crew rest compartment rendering both routes inoperative.

Compliance with the requirements of Special Condition No. 4(a) may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between crew rest compartment outlets is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with Special Condition No. 4(a). An inspection finding that an OHCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the crew rest compartment outlets, regardless of the location of a fire would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, crew rest compartment outlets that are located at absolute opposite ends (*i.e.*, adjacent to opposite end walls) of the OHCR compartment would require no further review or analysis with regard to their separation.

Compliance by Analysis

Analysis must show that the OHCR compartment configuration and interior features allow all occupants of the OHCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the OHCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

(2) Design elements to reduce the fire ignition sources in the OHCR compartment.

(3) Distribution and quantity of emergency equipment within the OHCR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (for example seats, folding berths, contents of stowage compartments, etc.).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat deformations in accordance with §§ 25.561(d) and 25.562(c)(8), seat back break-over, rigid structure that reduces access from one

part of the compartment to another, and items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards, availability of communications equipment, supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation, and load path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OHCR compartment. The location and quantity of PBE and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OHCR compartment.

The intent of this special condition is to provide sufficient egress route separation. Therefore the separation analysis described above should not be used to approve crew rest compartment outlets that have less physical separation (measured between the centroid of each outlet opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For an OHCR compartment with one outlet located near the forward or aft end of the compartment (as measured by having the centroid of the outlet opening within 20 percent of the total length of the compartment from the forward or aft end of the compartment) the outlet separation from one outlet to the other should not be less than 50 percent of the total OHCR compartment length.

For OHCR compartments with neither required crew rest compartment outlet located near the forward or aft end of the OHCR compartment (as measured by not having the centroid of either outlet opening within 20 percent of the forward or aft end of the total OHCR compartment length), the outlet separation from one outlet to the other should not be less than 30 percent of the total OHCR compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against crew rest compartment outlets. One of the two crew rest compartment outlets should not be located where normal movement or evacuation by passengers occurs (main aisle, cross aisle, or galley complex, for example) that would impede egress from the OHCR compartment. If an evacuation route is in an area where normal movement or evacuation of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the OHCR compartment) from head injury. The use of evacuation routes must not be dependent on any powered device. If a crew rest compartment outlet is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the OHCR compartment, must be established. The applicant for a change in type design must transmit all of these procedures to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the OHCR compartment evacuation routes. This training must instruct them to ensure that the OHCR compartment (including seats, doors, etc.) is in its proper TT&L configuration.

(e) There must be a means to prevent passengers on the main deck from entering the OHCR compartment when no flight attendant is present or in the event of an emergency, including an emergency evacuation.

(f) Doors or hatches that separate the OHCR compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

(g) The means of opening doors and hatches to the OHCR compartment must be simple and obvious. In addition, the crew rest compartment doors and hatches must be able to be closed from the main passenger cabin.

5. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the OHCR compartment to the passenger cabin floor.

Evacuation must be demonstrated for all evacuation routes. A crewmember may provide assistance in the evacuation (a total of one assistant within the OHCR compartment). Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OHCR compartment, or to the first landing, whichever is lower.

6. The following signs and placards must be provided in the OHCR compartment:

(a) At least one exit sign, located near each crew rest compartment outlet, meeting the requirements of § 25.812(b)(1)(i). An allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would be acceptable.

(b) An appropriate placard must be located conspicuously on or near each OHCR compartment door or hatch that defines the location and the operating instructions for access to and operation of the outlet door or hatch.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The door or hatch handles and operating instruction placards required by Special Condition No. 6(b) of these special conditions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

7. There must be a means in the event of failure of the aircraft's main power system, or of the normal OHCR compartment lighting system, for emergency illumination to be automatically provided for the OHCR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OHCR compartment to locate and transfer to

the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the crew rest compartment to locate a deployed oxygen mask.

8. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the OHCR compartment. There must also be two-way communications between the occupants of the OHCR compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin. In addition, the public address system must include provisions to provide only the relevant information to the crewmembers in the OHCR compartment (for example fire in flight, aircraft depressurization, preparation of the compartment for landing, *etc.*). That is, provisions must be made so that occupants of the OHCR compartment will not be disturbed with normal, non-emergency announcements made to the passenger cabin.

9. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the OHCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), for a period of at least ten minutes.

10. There must be a means, readily detectable by seated or standing occupants of the OHCR compartment, to indicate when seat belts should be fastened. Seat belt type restraints must be provided for berths and must be compatible with the sleeping position during cruise conditions. There must be a placard on each berth requiring that these restraints be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

11. Protective breathing equipment (PBE) must be provided in accordance with § 25.1439, except that in lieu of a device for each crewmember, the following must be provided: Two PBE devices approved to Technical Standard Order (TSO)-C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. The following equipment must also be provided in the OHCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) One flashlight.

Note: Additional PBE and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition No. 11, may be required as a result of the egress analysis accomplished to satisfy Special Condition No. 4(a).

12. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the OHCR compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire.

(b) An aural warning in the OHCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

13. Means to fight a fire must be provided. The means can either be a built-in extinguishing system or manual hand-held bottle extinguishing system.

(a) For a built-in extinguishing system:

(1) The system must have adequate capacity to suppress a fire considering the fire threat, volume of the compartment, and the ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards (MPS) that have been established for the agent being used.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

1. Enter the crew rest compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

2. Check for and extinguish any residual fire.

3. Confirm that the fire is out.

(b) For a manual hand-held bottle extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OHCR:

(1) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the compartment.

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the crew rest compartment must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

(4) Procedures describing methods to search the OHCR compartment for fire source(s) must be established and transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OHCR compartment from entering any other occupiable compartment.

(a) Small quantities of smoke may penetrate from the crew rest compartment into other occupied areas during the one-minute smoke detection time.

(b) There must be a provision in the firefighting procedures to ensure that all door(s) and hatch(es) at the crew rest compartment outlets are closed after evacuation of the crew rest compartment and during firefighting to minimize smoke and extinguishing agent from entering other occupiable compartments.

(c) Smoke entering any occupiable compartment when access to the OHCR compartment is open for evacuation of the crew rest compartment must dissipate within five minutes after the access to the OHCR compartment is closed.

(d) Hazardous quantities of smoke may not enter any occupied compartment during subsequent access to manually fight a fire in the crew rest compartment. The amount of smoke entrained by a firefighter exiting the

crew rest compartment is not considered hazardous.

(e) Flight tests must be conducted to show compliance with this requirement.

15. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the OHCR compartment. The system must provide an aural and visual warning to alert the occupants of the OHCR compartment to don oxygen masks in the event of depressurization. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the OHCR compartment is depressed. Procedures for crew rest compartment occupants in the event of depressurization must be established. These procedures must be transmitted to the operators for incorporation into their training programs and appropriate operational manuals. There must also be a limitation placed in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in depressurization procedures.

16. The following requirements apply to OHCR compartments that are divided into several sections by the installation of curtains or doors:

(a) To compensate for sleeping occupants, an aural alert that can be heard in each section of the OHCR compartment must accompany automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OHCR compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each section of the OHCR compartment created by the installation of a curtain, requirements for the following must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1).

(2) Emergency illumination (Special Condition No. 7).

(3) Emergency alarm system (Special Condition No. 9).

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 10).

(5) The smoke or fire detection system (Special Condition No. 12).

(d) OHCR compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway outlet. The exit signs must be provided in each separate section of the OHCR compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i). An exit sign with reduced background area as described in Special Condition No. 6(a) may be used to meet this requirement.

(e) For sections within an OHCR compartment that are created by the installation of a partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside a section of the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant from within a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway door.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway outlet. An exit sign with reduced background area as described in Special Condition No. 6(a) may be used to meet this requirement.

(5) Special Conditions No. 1 (no smoking placards), No. 7 (emergency illumination), No. 9 (emergency alarm system), No. 10 (fasten seat belt signal or return to seat signal as applicable) and No. 12 (smoke or fire detection system) must be met with the door open or closed.

(6) Special Conditions No. 8 (two-way voice communication) and No. 11 (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

17. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

18. Materials (including finishes or decorative surfaces applied to the materials) must comply with the requirements of § 25.853 as amended by Amendment 25–83. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83, and the test requirements of part 25, appendix F, part II, or other equivalent methods.

19. The addition of a lavatory within the OHCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 12 for smoke detection.

20. Each stowage compartment in the crew rest compartment, except for underseat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OHCR compartment that are not limited to stowage of emergency equipment or airplane supplied equipment must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition. The in-flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

REQUIREMENTS FOR FIRE PROTECTION FEATURES FOR STOWAGE COMPARTMENTS DEPENDING ON INTERIOR VOLUME SIZE

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 Cubic feet to less than 57 cubic feet	57 Cubic feet to 200 cubic feet
Materials of Construction [1]	Yes	Yes	Yes.
Smoke or Fire Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.
Location Detector [4]	No	Yes	Yes.

[1] *Material:* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.*, 14 CFR Part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Smoke or Fire Detectors:* Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide: (a) A visual indication in the flight deck within one minute after the start of a fire. (b) An aural warning in the OHCR compartment. (c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner:* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.*, § 25.855 at Amendment 25–93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] *Location Detector:* OHCR compartments that contain enclosed stowage compartments exceeding 25 ft^3 in interior volume and are located away from one central location such as the entry to the OHCR compartment or a common area within the OHCR compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on April 14, 2004.

Mike Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9515 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[FAA Docket No. FAA–2003–17383; Airspace Docket No. 04–AWA–01]

RIN 2120–AA66

Correction to Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on September 17, 2003. In that rule, inadvertent errors were made in the legal description of the Houston, TX, Class B airspace area. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 17, 2003, the FAA modified the Houston Class B airspace area (FAA Docket No. FAA–2003–14402/Airspace Docket No. 01–AWA–4; 68 FR 54329). That action contained several inadvertent errors in the legal description for the airspace area. Specifically, some areas were not the same as presented in the public meetings or studied by the *ad hoc* committee and were not sufficient to contain turbojet operations within the Houston Class B Airspace Area during the conduct of triple simultaneous operations. Subsequent to the publication of the final rule, the *ad hoc* committee met regarding the erroneous descriptions and agreed to corrections. This action corrects those inadvertent errors.

Corrections to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description for the Houston Class B airspace area, as published in the **Federal Register** on September 17, 2003 (68 FR 54329), and incorporated in 14 CFR 71.1, is corrected as follows:

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

§ 71.1 [Corrected]

■ On page 54329, correct the legal description of the Houston Class B Airspace, to read as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ASW TX B Houston, TX (Revised)

George Bush Intercontinental Airport (IAH)(Primary Airport)
(Lat. 29°59′04″ N., long. 95°20′29″ W.)
William P. Hobby Airport (HOU) (Secondary Airport)
(Lat. 29°38′44″ N., long. 95°16′44″ W.)
Ellington Field (EFD)
(Lat. 29°36′26″ N., long. 95°09′32″ W.)
Humble VORTAC (IAH)
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Point of Origin
(Lat. 29°39′01″ N., long. 95°16′45″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile DME arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile DME arc to the Humble VORTAC 069° radial; thence east along the Humble VORTAC 069° radial to the 10-mile DME arc of Humble VORTAC; thence clockwise along the Humble VORTAC 10-mile DME arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45′37″ N., long. 95°21′58″ W.; to lat. 29°45′46″ N., long. 95°11′47″ W.; thence clockwise along

the 8-mile arc from the Point of Origin to the 056° bearing from the Point of Origin; thence southwest along the 056° bearing to the 5.1-mile fix from the Point of Origin, thence direct to the Point of Origin 131° bearing/5.8 mile fix from the Point of Origin; thence southeast along the 131° bearing from the Point of Origin to the 7-mile arc from the Point of Origin; thence clockwise on the 7-mile arc to the 156° bearing from the Point of Origin; thence north along the 156° bearing to the 6-mile fix from the Point of Origin; thence clockwise along the 6-mile arc to the 211° bearing from the Point of Origin; thence south along the 211° bearing from the Point of Origin to the 8-mile arc from the Point of Origin; thence clockwise on the 8-mile arc to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to the 211° bearing from the Point of Origin; thence northeast along the 211° bearing to the 10-mile arc from the Point of Origin; thence counterclockwise along the 10-mile arc to the 156° bearing from the Point of Origin; thence southeast along the 156° bearing to the 15-mile arc from the Point of Origin; thence counterclockwise on the 15-mile arc to the intersection of the 15-mile arc and Interstate 10 (I–10); thence east on I–10 to the intersection of I–10 and the Humble VORTAC 20-mile DME arc; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 060° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and Humble VORTAC 048° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 312° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 300° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 250° radial; thence east to the intersection of the Humble VORTAC 243° radial and the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43′40″ N., long. 95°27′40″ W.; thence southwest to and along SH 59 to the point of beginning, excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 250° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 257° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 290° radial; thence east to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 300° radial; thence clockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 060° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 070° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 103° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 110° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 060° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 048° radial; thence counterclockwise on the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 312° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 300° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 250°radial; thence east to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 243° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43′40″ N., long. 95°27′40″ W.; thence southwest to and along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 15-mile arc and the 211° bearing from the Point of Origin; thence clockwise along the 15-mile arc to the intersection of the 15-mile arc and the 254° bearing from the Point of Origin; thence southwest to the intersection of the 20-mile arc and the 248° bearing from the Point of Origin; thence counterclockwise along the 20-mile arc from the Point of Origin to the intersection of the 20-mile arc and the 211° bearing from the Point of Origin; thence northeast along the 211° bearing from the Point of Origin to the intersection of the 10-mile arc and the 211° bearing from the Point of Origin; thence counterclockwise along the 10-mile arc to the intersection of the 10-mile arc and the 156° bearing from the Point of Origin; thence southeast along the 156° bearing to the 15-mile arc and 156° bearing from the Point of Origin; thence clockwise along the 15-mile arc from the Point of Origin to the point of beginning, excluding Areas A, B, D, and E.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 257° radial; thence east to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 250° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and SH 59; thence southwest to and along SH 59 to the intersection of the 15-mile arc from the Point of Origin and SH 59; thence counterclockwise on the 15-mile arc from the Point of Origin to the intersection of the 15-mile arc from the Point of Origin and the 254° bearing from the Point of Origin; thence southwest to the intersection of the 20-mile arc from the Point of Origin and the 248° bearing from the Point of Origin; thence clockwise on the 20-mile arc from the Point of Origin to the intersection of the 20-mile arc from the Point of Origin and SH 59; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 211° bearing and the 20-mile arc from the Point of Origin; thence northeast to the intersection of the 15-mile arc from the Point of Origin and the 211° bearing from the Point of Origin; thence counterclockwise on the 15-mile arc from the Point of Origin to the intersection of the 15-mile arc from the Point of Origin and I–10; thence east along I–10 to the intersection of the Humble VORTAC 20-mile DME arc and I–10; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 110° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 103° radial; thence clockwise on the Humble VORTAC 30-mile DME arc until the intersection of the Humble VORTAC 30-mile DME arc and the 20-mile arc from the Point of Origin; thence clockwise on the 20-mile arc from the Point of Origin to the intersection of the 20-mile arc from the Point of Origin and the 248° bearing from the Point of Origin; thence southwest to the intersection of the 25-mile arc from the Point of Origin and the 245° bearing from the Point of Origin; thence counterclockwise on the 25-mile arc from the Point of Origin to the intersection of the 25-mile arc from the Point of Origin and the 211° bearing from the Point of Origin; thence northeast on the 211° bearing from the Point of Origin to the point of beginning; and that airspace beginning at the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 300° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 290° radial; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 070° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 060° radial; thence counterclockwise along the Humble VORTAC 20-mile DME arc to the point of beginning, excluding Areas B and C.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the 15-mile arc from the Point of Origin and State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south

along FR 521 to the intersection of FR 521 and the 15-mile arc from the Point of Origin; thence clockwise along the 15-mile arc from the Point of Origin to the point of the beginning.

* * * * *

Issued in Washington, DC, on April 14, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–9555 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2004–16982; Notice No. 04–03]

Colo Void Clause Coalition; Antenna Systems Co-Location; Voluntary Best Practices

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Statement of policy and disposition of comments.

SUMMARY: The FAA is revising its policy about the co-location of antenna systems on structures previously studied by the FAA. Under certain circumstances, the FAA will not require a person to file notice for an aeronautical study to add frequencies to an existing structure that has a current and valid No Hazard Determination on file with the FAA. On December 23, 2003, the Colo Void Clause Coalition (CVCC) wrote to Marion C. Blakey, FAA Administrator, and forwarded a Voluntary Best Practices Agreement Regarding the Potential for Electromagnetic Interference Upon FAA Facilities. The FAA finds that it can amend its policy to accommodate certain issues raised by the CVCC's Best Practices Agreement.

DATES: This policy is effective April 27, 2004.

FOR FURTHER INFORMATION CONTACT: René J. Balanga, Office of Spectrum Policy and Management, ASR–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, Telephone (202) 267–3819 or (202) 267–8534.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this Notice using the Internet by:

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

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

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

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

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

Definitions

1. Colo(cation) Void Clause Coalition (CVCC)

The CVCC is a coalition of wireless cellular phone and Personal Communication Services (PCS) service providers, tower companies, and trade associations, including the Personal Communications Industry Association (PCIA) and the Cellular Telecommunications and Internet Association (CTIA). According to the CVCC, its members currently own or manage most of the radio towers throughout the United States. Major wireless service providers and tower companies primarily make up the coalition, but other wireless service providers in the cellular phone and PCS industries, as well as tower companies, are represented by the CVCC through membership with PCIA and CTIA.

2. ''Frequency-Only'' Notice Requirements

When the FAA issues a Determination of No Hazard for proposed construction or alteration of an antenna structure, the Determination includes the following condition: ''This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, frequency(ies) or use of greater power will void this determination. Any future construction or alteration, including the increase in heights, power, or the addition of other transmitters requires separate notice to the FAA.'' As a result of this condition, a proponent seeking to only add frequencies to a previously studied structure for which the FAA has issued a Determination of No Hazard must file notice with the FAA. They must file the notice on FAA Form 7460–1, in accordance with the previously discussed condition.

3. Electromagnetic Interference (EMI)

Electromagnetic interference (EMI) is defined as any electromagnetic disturbance that interrupts, obstructs, or otherwise degrades or limits the effective performance of electronics/electrical equipment. It can be induced intentionally, as in some forms of electronic warfare, or unintentionally, as a result of spurious emissions and responses, intermodulation products, and the like. EMI is also referred to as radio frequency interference (RFI).

Background

Under title 14 of the Code of Federal Regulations (14 CFR) part 77, the FAA requires notice for certain proposed construction and alteration of structures that may affect the safe and efficient use of the navigable airspace. The FAA studies these proposals and determines whether they would cause harmful EMI. If the proposal would cause harmful EMI, it would constitute a hazard to air navigation. Under title 49 of the United States Code (U.S.C.) sections 40103 and 40113, the FAA may also study proposed antenna systems that may result in interference to air navigation, radio communication, or surveillance facilities or equipment. These studies include the frequencies and the mounting locations of Federal Communications Commission (FCC) regulated transmitters for certain wireless services authorized under 47 CFR parts 1 (Practice and Procedure), 22 (Public Mobile Services), 24 (Personal Communications Services), 90 (Private Land Mobile Radio Services), and 101 (Fixed Microwave Services).

If a person seeks to add frequency(ies) that might involve co-locating antenna systems on an existing structure for which the FAA issued a Determination of No Hazard to Air Navigation, the person must file a notice with the FAA (Frequency-only notice requirement).

Recently, the FAA evaluated submissions from the CVCC about the FAA's EMI evaluation process and procedures under 14 CFR part 77 and FAA Order 7400.2, Procedures for Handling Airspace Matters. In particular, the CVCC voiced concerns about the ''requirement'' to file notice with the FAA to add frequency-only proposals to the original structure. The CVCC proposed that the FAA grant

waivers from the requirement to file notice in specified frequency bands.

On December 23, 2003, the CVCC wrote to Marion C. Blakey, FAA Administrator, and forwarded a Voluntary Best Practices Agreement Regarding the Potential for Electromagnetic Interference Upon FAA Facilities (Best Practices Agreement (BPA)). The BPA outlined a proposed solution to the frequency-only notice requirement. Under the BPA, the CVCC proposed that its members not be required to provide notification to the FAA when only adding certain specific frequencies to a structure located beyond one nautical-mile radius from any existing FAA facility. Also, the BPA stated that the CVCC would work closely with the FAA in mitigating any EMI resulting from these frequencies that could compromise safe flight.

Research from prior FAA case studies of co-located antenna systems and engineering evaluations showed minimal EMI effects on FAA facilities from wireless services propagating on several frequency bands. The few cases where EMI existed and was determined to be hazardous to flight safety were during extensive equipment failures from the wireless service provider, and not from the equipment when operating within normal specifications.

Comments

On February 3, 2004, the FAA published a Notice of availability and request for comments on the CVCC letter dated December 23, 2003, and the accompanying Best Practices Agreement (69 FR 5101). The FAA did not receive any comments or additional information within the comment period.

Policy Change

The FAA recognizes the telecommunications industry's need and commitment to provide wireless services to the public. Also, the FAA recognizes that it is essential for these companies to speed up their time frame for build-out and deployment of their networks. However, the FAA's first commitment is to aviation safety. Thus, the FAA finds that it can amend its policy to accommodate certain issues raised by the CVCC's Best Practices Agreement. Notwithstanding this new policy, the requirements under 14 CFR part 77 about notice to the FAA of proposed construction or alteration of man-made structures under existing FAA policy and regulations are not altered or modified. If the addition of frequencies, under this policy, to a previously studied structure increases the height of that structure, notice must be filed with the FAA under 14 CFR 77.13. Physical structures located on or near public use landing facilities raise concerns about possible obstruction to aircraft, and the FAA will handle these issues pursuant to current regulations and procedures.

Under the new policy, a proponent will not be required to file notice with the FAA for an aeronautical study to add frequencies to an existing structure that has a current No Hazard Determination on file with the FAA. If an additional antenna system must be used to add frequencies, the antenna system must not be located on Federal or Public Use Landing Facilities property. Also, the antenna system must not be co-located or mounted on an FAA antenna structure without prior coordination with the FAA's Office of Spectrum Policy and Management.

This policy only applies to antenna systems operating on the following frequencies and service types, as dictated by various parts of 47 CFR,

- 806—821 MHz and 851—866 MHz (Industrial/Business/Specialized Mobile Radio Pool—Part 90)
- 821—824 MHz and 866–869 MHz (Public Safety Mobile Radio Pool ''Part 90)
- 816—820 MHz and 861—865 MHz (Basic Exchange Telephone Radio—Parts 1 and 22)
- 824—849 MHz and 869—894 MHz (Cellular Radiotelephone—Parts 1 and 22)
- 849—851 MHz and 894—896 MHz (Air-Ground Radiotelephone—Parts 1 and 22)
- 896—901 MHz and 935—940 MHz (900 MHz SMR—Part 90)
- 901—902 MHz and 930—931 MHz (Narrowband PCS—Part 24)
- 929—930 MHz, 931—932 MHz, and 940—941 MHz (Paging—Parts 1, 22, and 90)
- 1850—1990 MHz (Broadband PCS—Part 24, Point-to-Point Microwave—Part 101)
- 2305—2320 MHz and 2345—2360 MHz (Wireless Communications Service (WCS—Part 27);

In addition, the following conditions also apply: (1) The proponent must provide the FAA Regional Spectrum Offices with an electronic copy of its antenna system location databases quarterly or as specified in a Letter of Agreement with the FAA Regional Spectrum Offices. (2) If an antenna system, operating in the designated frequency bands, causes EMI to one or more FAA facilities, the FAA will contact the proponent. The proponent must mitigate the EMI in a timely manner, as recommended by the FAA in each particular case. Depending on the severity of the interference, the proponent must eliminate harmful EMI either by adjusting operating parameters (for example, employing extra filtering or reducing effective radiated power), or by ceasing transmissions, as may be required by the FCC and the FAA. Failure to provide successful EMI mitigation techniques will result in referral to the FCC's Enforcement Bureau for possible enforcement action. (3) This policy only applies to current technologies and modulation techniques (analog, TDMA, GSM, *etc.*) existing in the wireless radiotelephone environment on the date of issuance of this policy. Any future technologies placed into commercial service by wireless service providers, although operating on the frequencies mentioned above, must either coordinate the new technology with the FAA's Office of Spectrum Policy and Management or must provide notification to the FAA under 14 CFR part 77 procedures.

The FAA will revise the conditional language in future cases involving Determinations of No Hazard to reflect this policy. Furthermore, this policy applies retroactively to any structure for which the FAA has issued a Determination of No Hazard.

Issued in Washington, DC, on April 21, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–9513 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–016]

RIN 1625–AA09

Drawbridge Operating Regulation; Illinois Waterway, Joliet, IL

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 Jefferson Street Bridge, mile 287.9, and Cass Street Bridge, mile 288.1, across the Illinois Waterway at Joliet, Illinois. This deviation allows the drawbridges to remain closed to navigation for three hours from 8:30 a.m. to 11:30 a.m. on May 15, 2004 Central Standard Time. The deviation is necessary to facilitate maintenance work on the bridges that is

essential to the continued safe operation of the drawbridges.

DATES: This temporary deviation is effective from 8:30 a.m. to 11:30 a.m. on May 15, 2004.

ADDRESSES: Materials referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation on March 25, 2004 for the operation of the drawbridges to allow the bridge owner time for preventative maintenance. Presently, the draws open on signal for passage of river traffic. This deviation allows the bridges to remain closed to navigation for three hours from 8:30 a.m. to 11:30 a.m. on May 15, 2004. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridges during the maintenance. There are no alternate routes for vessels transiting through mile 287.9 and mile 288.1 on the Illinois Waterway. The drawbridges will be able to open for emergencies during the three-hour maintenance period.

The Jefferson Street Bridge, mile 287.9 and Cass Street Bridge, mile 288.1 provide a vertical clearance of 16.6 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. In order to inspect the entire steel deck for fractures, the bridges must be kept inoperative and in the closed to navigation position. This deviation has been coordinated with waterway users. No objections were received.

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

Dated: April 16, 2004.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 04–9483 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcast Services

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 70 to 79, revised as of Oct. 1, 2003, § 73.202(b), the Table of FM Allotments is corrected as follows:

1. Under Alaska by adding Channel 231C2 at Sterling;
2. Under Florida by adding Channel 261A at Cedar Key; and
3. Under Illinois by adding an entry for St. Anne, Channel 293A.

[FR Doc. 04–55506 Filed 4–26–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040311088–4119–02; I.D. 030104A]

RIN 0648–AQ81

Fisheries of the Northeastern United States; Spiny Dogfish Fishery

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

ACTION: Final 2004–2005 specifications for the spiny dogfish fishery.

SUMMARY: NMFS announces final specifications for the 2004–2005 spiny dogfish fishery. These measures are specified to rebuild the spiny dogfish resource. The intent of this action is to specify the commercial quota for the spiny dogfish fishery to achieve the annual target fishing mortality rate (F) specified in the Spiny Dogfish Fishery Management Plan (FMP) in order to prevent overfishing of this resource.

DATES: Effective May 27, 2004, through April 30, 2005.

ADDRESSES: Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee (Monitoring Committee); the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at *http://www.nero.nmfs.gov./ro/doc/nero.html*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, fax (978) 281–9135, e-mail *eric.dolin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Spiny Dogfish FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual target fishing mortality rate (F) specified in the FMP. The target F for the 2004–2005 fishing year is not to exceed 0.08.

Proposed 2004–2005 specifications were published on March 18, 2004 (69 FR 12826). Public comments were accepted through April 2, 2004. A full discussion of the process undertaken to develop the annual specifications was provided in the proposed rule and is not repeated here. The final specifications are unchanged from those that were proposed.

Specifications for the 2004 Fishing Year

The commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2004–2005 fishing year will be divided into two semi-annual periods as follows: 2,316,000 lb (1,050,512 kg) for quota period 1 (May 1, 2004 - Oct. 31, 2004); and 1,684,000 lb (763,849 kg) for quota period 2 (Nov. 1, 2004 - April 30, 2005). The possession limits will be 600 lb (272 kg) for quota period 1, and 300 lb (136 kg) for quota period 2.

Comments and Responses

Three sets of comments were received from the public. Most of the issues raised in the comments are not germane to the spiny dogfish fishery, and instead focus on broader concerns about fishery management in the United States. The two specific comments that address the spiny dogfish fishery are discussed below.

Comment 1: One commenter wondered if implementing a directed

fishery on smaller male spiny dogfish might contribute to the sustainability of the stock, while at the same time ''reward[ing] simple gear fisherman like handgear and longline fishermen,'' who might be able to target such smaller males.

Response: Although the possibility of having a directed fishery on smaller male spiny dogfish was discussed during the development of the FMP, it is not currently a viable option because there is no market for small males, and there is no gear to select small males over small females.

Comment 2: One commenter argued that the quota should be cut to 1 million lb (453,592 kg) and that the possession limits for both periods should be 100 lb (45 kg).

Response: NMFS is implementing the 4–million lb (1.81–million kg) commercial quota and 600–lb (272–kg)/300–lb (136–kg) possession limits for Quota Period 1 and 2, respectively, consistent with the Monitoring Committee's recommendation to maintain fishing mortality targets and rebuilding objectives of the FMP. The Monitoring Committee did not comment on a lower quota or possession limits because the 4–million lb (1.81–million kg) commercial quota and the 600–lb (272–kg)/300–lb (136–kg) possession limits are consistent with the FMP's fishing mortality target. Any further reduction in landings or possession limits would have to be considered in light of potential increased spiny dogfish discards.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the IRFA and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see ADDRESSES).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

Three comments were submitted on the proposed rule, but none were specific to the IRFA or the economic impacts of this action.

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

All of the affected businesses (fishing vessels) are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. There were 255 vessels that reported spiny dogfish landings to NMFS in 2002 (the most recent year for which there is vessel-specific data).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements.

Minimizing Significant Economic Impacts on Small Entities

The annual setting of the specifications is a relatively limited process that focuses on setting a quota and possession limits. The limited nature of this process, in turn, necessarily limits the alternatives available for minimizing significant economic impacts on small entities. Alternatives that were considered to lessen the impacts on small entities are summarized below, and compared to the measures being implemented through these final specifications (Alternative 1).

Alternative 2 evaluates an annual bycatch quota of 4 million lb (1.81 million kg), divided into two semi-annual quota periods for the 2004–2005 fishing year. The quota for period 1 would be 2.316 million lb (1.05 million kg) and for period 2 would be 1.684 million lb (763,849 kg). The possession limits for both quota periods would not exceed 1,500 lb (680 kg). Alternative 3 evaluates an annual 4.4–million lb (2–million kg) quota for the 2004–2005 fishing year, with a 1,500–lb (680–kg) possession limit for both periods. Alternative 4 evaluates the impact of having no management measures (no action).

Under Alternative 2, the potential changes in 2004–2005 revenues under the 4–million lb (1.81–million kg) quota were evaluated relative to landings and revenues derived during 2002–2003: 4.76 million lb (2.2 million kg) of landings, valued at $970,000. The analysis was based on the last full fishing year of landings data and assumed that the revenues of the 255 vessels that landed spiny dogfish in 2002–2003 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to the fishery as a whole was estimated to be about $155,200, or about $609 per vessel, compared to fishing year 2002–2003.

Under Alternative 2, the gross revenue impacts would be similar to impacts anticipated for Alternative 1, since the recommended quotas are identical. The possession limit, however, would increase to 1,500 lb (680 kg). The magnitude of increases in gross revenue associated with the larger possession limit is not known because of limited data. Recent possession limit analyses conducted by the Northeast Fisheries Science Center suggested that trip-level profitability associated with landing spiny dogfish was marginal when 1,500 or fewer pounds (680 kg) of spiny dogfish were retained. As such, an increase from status quo possession limits upward to 1,500 lb (680 kg) may not be expected to increase directed fishing for dogfish or provide significant increases in associated economic benefits. In addition, the ASMFC has enacted the more restrictive possession limits of 600 lb (272 kg) in quota period l and 300 lb (136 kg) in quota period 2. Therefore a higher possession limit in the EEZ would have no effect because vessels could not land spiny dogfish over the ASMFC's more restrictive possession limits.

Under Alternative 3, the quota would be 4.4 million lb (2.2 million kg). This represents a 7.5–percent decrease in landings relative to the landings in 2002–2003. The reduction in overall gross revenues to the fishery as a whole under this alternative was estimated to be about $72,750, or about $285 per vessel, compared to fishing year 2002–2003.

Under Alternative 4, which would implement no management measures, landings are projected to be 25 million lb (11.36 million kg) in 2003–2004. This would constitute a 525- percent increase in fishing opportunity compared to the status quo (4.0 million pounds (1.81 million kg)) and a 425–percent increase in fishing opportunity compared to actual 2002–2003 landings (4.76 million lb (2.2 million kg)). Although the short-term social and economic benefits of an unregulated fishery would be much greater than those associated with Alternatives 1 through 3, fishing mortality would be expected to rise above the threshold level that allows the stock to replace itself (FREP = 0.11) such that stock rebuilding could not occur. In the long term, unregulated harvest would lead to depletion of the spiny dogfish population, which would

eventually eliminate the spiny dogfish fishery altogether.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the spiny dogfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: *http://www.nmfs.gov/ro/doc/nero.html.*

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: April 21, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–9541 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 81
Tuesday, April 27, 2004

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AH12

Public Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to reflect changes regarding officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to reflect a change of an appellate official due to a reorganization. This amendment would have the Executive Assistant to the Secretary of the Commission, rather than the Assistant Secretary, make the initial determination to deny NRC records in whole or in part under the Commission's regulations. An appeal of a denial of request for waiver or reduction of fees, or denial of a request for expedited processing would be appealed to the Executive Director for Operations, rather than the Secretary of the Commission. The proposed rule would establish NRC procedures to give predisclosure notification to submitters of confidential business or commercial information, and would make a number of additional clarifying and conforming amendments.

DATES: Submit comments by July 12, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH12) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

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

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail at *CAG@nrc.gov*. Comments may also be submitted via the Federal Rulemaking Portal at *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

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

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The proposed rule and supporting documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*.

Also, publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

FOR FURTHER INFORMATION, CONTACT: Carol Ann Reed, Freedom of Information Act and Privacy Act Officer, Information and Records Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–7169; Internet: *FOIA@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) grants individuals the right to seek access to agency records and the right to appeal an initial agency denial of access to the requested records. The Privacy Act (PA) allows an individual to request records filed under his or her name or personal identifier. In January 2001, the Commission announced a reorganization that directed the Chief Information Officer (CIO) to report to the Executive Director for Operations (EDO). To conform with this reporting relationship, the appellate authority previously delegated to the Secretary of the Commission to serve as the appellate official for denials of Freedom of Information Act (FOIA) requests for fee waivers and requests for expedited processing of FOIA requests has been reassigned to the EDO or a Deputy EDO. Also, the initial denying official for records located in the Office of the Commissioners, Office of the Secretary, and with Advisory Committees has been designated as the Executive Assistant to the Secretary of the Commission because the Assistant Secretary position was abolished. Prior to the abolishment of the Assistant Secretary position, the incumbent of that position was also the Advisory Committee Management Officer. To avoid having two denying officials in the Office of the Secretary, even though the Executive Assistant to the Secretary of the Commission does not currently serve as the Advisory Committee Management Officer, that position has been designated as the denying official for Advisory Committee records in order to have a single denying official in the Office of the Secretary. This proposed rule would also establish agency procedures for predisclosure notification to submitters of confidential financial and commercial information.

The proposed amendments would update provisions relating to the location of publicly available NRC records, and make several clarifications: Where requests and appeals are to be sent; when a request or an appeal is deemed received; how to establish an account with the PDR reproduction contractor; how to obtain access to copyrighted information; applicability

of the independent determination made by the FOIA/PA Officer; and that failure of a requester to pay FOIA fees billed by another Federal agency may be a basis for not processing a request. The proposed amendment would make several changes in the PA regulations. Reference to a specific Executive Order number that establishes criteria for classifying information has been deleted. A uniform approach for referral of PA records under the control of another Federal agency has been established. This proposed rule would also remove the fee waiver provision since it is not needed. Readers are referred to the NRC Web site to find the particular exemptions applicable to a specific PA System of Records.

Discussion of Amendments

The NRC would amend 10 CFR part 9, subpart A, Freedom of Information Act Regulations and subpart B, Privacy Act Regulations.

Section 9.8 would be amended to include a new § 9.28 in the list of sections that contain an information collection requirement that appears in paragraph (b).

Section 9.21(c)(5) would be changed to reflect that an index to records made public in response to a FOIA request that are likely to become the subject of subsequent FOIA requests, are publicly available at the NRC Web site. Section 552(a)(2)(E) of the FOIA requires that NRC make public an index to records made public in response to FOIA requests that are likely to become the subject of subsequent FOIA requests for substantially the same records.

Section 9.21(c)(6) would be revised to address the requirement that the agency publish a statement in the **Federal Register** determining that publication of an index quarterly or more frequently is unnecessary. This section would state that it is unnecessary to continue publishing the monthly index because members of the public may create their own indexes to records, including those in the categories required to be made public by 5 U.S.C. 552(a)(2), by using the search features in ADAMS. Section 5 U.S.C. 552(a)(2)(E) requires that the agency maintain and make available for public inspection and copying current indexes for records that sections 552(a)(2)(A),(B),(C), and (D) require be made public and publish that index quarterly or more frequently, unless determined by order published in the **Federal Register**, that the publication would be unnecessary or impracticable. To meet this requirement, prior to making ADAMS publicly accessible, the NRC published ''Documents Made Publicly Available'' (NUREG–0540) on a monthly basis. With the public's ability to create their own indexes using ADAMS, the NRC determined that publication of the monthly index is no longer necessary.

Section 9.23 would be revised to clarify how a person may open an account with the NRC PDR reproduction contractor and to state that payment is made directly to the PDR reproduction contractor. Also, § 9.23 would clarify that a request is not considered received under the FOIA until the date it is actually received by the Freedom of Information Act and Privacy Act Officer (FOIA/PA Officer).

Section 9.25(g) would be renumbered and reorganized so that the responsibility of each denying official is described in separate paragraphs. Section 9.25(g)(2) would be changed to reflect that the Executive Assistant to the Secretary of the Commission would make the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Assistant Secretary of the Commission. In addition, the Executive Assistant to the Secretary of the Commission has been designated as the denying official for records for which an Advisory Committee has responsibility. Section 9.25(h) would be revised to clarify that the independent determination by the FOIA/PA Officer would apply to records other than those records for which the initial disclosure determination is made by the Executive Assistant to the Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations.

Section 9.27(a) would be revised to indicate that non-sensitive records disclosed in response to FOIA requests are made publicly available through ADAMS.

Section 9.28 would be added to establish procedures for predisclosure notification to submitters of confidential business and financial information. This would implement the requirement of Executive Order 12600, that directs agencies to establish these procedures by regulation.

Section 9.29 has been renumbered and reorganized so that each type of appeal or appellate official's responsibility is described in separate paragraphs. As a result of a reorganization, § 9.29(c) would be revised to reflect that an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, would be appealed to the EDO rather than to the Secretary of the Commission. Section 9.29(c) also would be revised to reflect that the Executive Assistant to the Secretary of the Commission would make the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Assistant Secretary of the Commission. Also, an appeal would continue to be directed to the appropriate appellate official but would be sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO, Secretary of the Commission, and Inspector General are uniformly tracked.

Section 9.35(d) would be revised to state that if a copyrighted publication is responsive to a FOIA request, the requester will be informed of the citation to the copyrighted publication and advised to contact the NRC's PDR to arrange to view the publication. This change would emphasize the responsibility of the requester to make arrangements with the PDR staff to view a copyrighted publication.

Section 9.40(f) would be revised to include failure to pay applicable fees billed by another agency for a previous FOIA request as a basis for not processing a new request received from the same requester. This would conform NRC regulations to past NRC and government-wide practice.

As a result of a reorganization, § 9.43(d) would be revised to reflect that an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, would be appealed to the EDO rather than to the Secretary of the Commission.

Section 9.53(b) would clarify that a request is not considered received under the PA until the date it is actually received by the FOIA/PA Officer.

In § 9.54(a)(1) the term ''photocopy'' would be changed to ''copy'' to ensure that copies made by any type of technology will be acceptable documentation.

Section 9.61(c)(1) would be revised to eliminate the reference to a specific Executive Order number and to state that the exempted information is information classified under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy. This is consistent with the statutory language that does not refer to a specific Executive Order number. Also, the reference to § 9.95 would be deleted because proposed changes to that section would delete references to specific exemptions.

Section 9.62 would be revised to establish a uniform approach for dealing with requests for PA records under control of another Government agency by indicating the requester will be provided the name of the controlling agency, if known.

Sections 9.65 and 9.67 would be revised to clarify that appeals of denials of access and Statements of Disagreement under the PA would continue to be directed to the appropriate appellate official but are to be sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO and to the Inspector General are uniformly tracked. Also §§ 9.65, 9.66, and 9.67 would be revised to state that a PA appeal is not deemed received until it is actually received by the FOIA/PA Officer. Sections 9.65, 9.66, and 9.67 would be revised to state that calendar days are used to calculate the time within which an appeal of denial of access to a record in a PA System of Records must be made and within which a Statement of Disagreement must be submitted.

The NRC would amend § 9.85 to remove the fee waiver provision because it is not needed and the agency's practice is to provide a free copy of the information to the requester. It also would note that fees may be charged where the information is disclosed from PA Systems of Records under the FOIA. This normally occurs because an entire system of records containing criminal law enforcement records is exempt from being accessed under the PA exemption (j)(2). Thus, a request for records from such a system will be processed under the FOIA and the FOIA fee standards apply.

Section 9.95 would be revised to indicate that specific exemptions applicable to each PA System of Record are found in the PA notice published biannually in the **Federal Register** and that a current version is available at the NRC Web site, *http://www.nrc.gov*.

Plain Language

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

National Technology Transfer and Advancement Act

The National Technology and Transfer Act of 1995 (Act), Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with the applicable law or otherwise impractical. This rule would reflect changes in officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to make a change in an appellate official due to a reorganization. The proposed rule would establish NRC procedures to give predisclosure notification to submitters of confidential business or commercial information, and would make a number of additional clarifying and conforming amendments. For these reasons, the Commission concludes that the Act does not apply to this rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5–F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0043), Office of Management and Budget, Washington, DC 20503. Comments to OMB on the information collections or on the above issues should be submitted by May 27, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

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

Regulatory Analysis

A regulatory analysis has not been prepared for this proposed rule because this rule is administrative in that it amends the regulations to reflect the current NRC organization and current responsibilities of NRC officials for denying access to requests for information and other requests made under the FOIA or PA. They are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect those who make requests for access to information under the provisions of the FOIA and PA. These are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended;

the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Freedom of Information Act as amended; the Privacy Act as amended, the NRC is proposing to adopt the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. In § 9.8, paragraph (b) is revised to read as follows: .

§ 9.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 9.23, 9.28, 9.29, 9.40, 9.41, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

3. In § 9.21, paragraphs (c)(5) and (6) are revised to read as follows:

§ 9.21 Publicly available records.

* * * * *

(c)* * *

(5) Copies of records that have been released to a person under the FOIA that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records and a general index to those records.

(6) Individual indexes to publicly available records, including those records specified in paragraph (c) of this section, may be created by using the search features of the Agencywide Documents Access and Management System (ADAMS), located at the NRC Web site, *http://www.nrc.gov.* This capability made it unnecessary for the NRC to continue publishing its monthly publication, *Documents Made Publicly Available* (NUREG–0540) after March 1999.

* * * * *

4. In § 9.23, paragraph (a)(1)(ii) and the introductory text of paragraph (b) are revised to read as follows:

§ 9.23 Requests for records.

(a) * * *

(1) * * *

(ii) To obtain copies of records expeditiously, a person may open an account with the NRC Public Document Room reproduction contractor. Payment for reproduction services will be made directly to the contractor.

* * * * *

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6 of this chapter. The request must be in writing and clearly state on the envelope and in the letter that it is a ''Freedom of Information Act request.'' The NRC does not consider a request as received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

5. In § 9.25, paragraphs (g) and (h) are revised to read as follows:

§ 9.25 Initial disclosure determination.

* * * * *

(g)(1) *Initial disclosure determination on requests for records originated by, or located in the files of the Office of the Inspector General.* If, as a result of the review specified in paragraph (f) of this section, the Assistant Inspector General for Investigations finds that agency records that are originated by or located in the Office of the Inspector General are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Assistant Inspector General for Investigations will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in § 9.27.

(2) *Initial disclosure determinations on requests for records originated by or transmitted to the Commission, or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility.* If, as a result of the review specified in paragraph (f) of this section, the Executive Assistant to the Secretary of the Commission finds that agency records originated by or transmitted to the Commission or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Executive Assistant to the Secretary of the Commission will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in § 9.27.

(3) *Initial disclosure determination for records originated by, or for which the Office of the General Counsel has principal responsibility.* If, as a result of the review specified in paragraph (f) of this section, the General Counsel finds that agency records that are originated by, or for which the Office of the General Counsel has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the General Counsel will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in § 9.27.

(h) *Initial disclosure determinations on requests for records other than those for which the initial disclosure determination is made by the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, or the General Counsel.* If, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records other than those described in paragraph (g) of this section, that are originated by, or for which the office has primary responsibility, should be denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in § 9.27.

* * * * *

6. In § 9.27, paragraph (a) is revised to read as follows:

§ 9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Freedom of Information Act and Privacy Act Officer will promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will also advise

the requester of any applicable fees under §§ 9.35 and 9.37. The NRC will routinely make copies of non-sensitive records disclosed in response to Freedom of Information Act requests publicly available through the Agencywide Documents Access and Management System (ADAMS) located in the NRC's Electronic Reading Room that can be accessed via the NRC Web site at *http://www.nrc.gov/NRC/reading-rm/adams.html.* Records that contain information personal to the requester, involve matters that are not likely to be of public interest to anyone other than the requester, or contain privileged or confidential information that should only be disclosed to the requester will not be made publicly available on the NRC Web site.

* * * * *

7. A new § 9.28 is added to read as follows:

§ 9.28 Predisclosure notification procedures for information containing trade secrets or confidential commercial or financial information.

(a) *Notice of opportunity to object to NRC's initial disclosure determination.* Whenever NRC makes an initial determination that information should be disclosed in response to a Freedom of Information Act request or a Freedom of Information Act appeal which has been designated by the submitter as trade secrets or confidential commercial or financial information, or the NRC believes the information contains such trade secrets or confidential commercial or financial information, the NRC will give the submitter of the information written notice of NRC's initial determination and an opportunity to object. The notice must describe the business information requested or include copies of the requested records or record portions containing the information.

(b) *Submitter objection to disclosure.* The submitter will be allowed 15 days from date of the notice described in paragraph (a) of this section to object to disclosure. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the Freedom of Information Act and Privacy Act Officer upon request by the submitter.

(c) *Notice of final decision to disclose.* The NRC shall consider a submitter's written statement and specific grounds for nondisclosure. If the NRC agrees to withhold the information from public disclosure, the NRC will inform the requester in the manner described in § 9.27 of the agency decision to deny access to the requested information. Whenever the NRC denies the submitter's request for nondisclosure and decides to disclose the information, the NRC shall give the submitter written notice, which must include:

(1) A statement of the reason(s) for the determination;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which must be a reasonable time subsequent to the notice, after which the information will be made available to the public.

(d) *Corresponding notice to requesters.* When the NRC provides a submitter with notice and opportunity to object to disclosure under paragraph (b) of this section, the NRC shall also notify the requester(s). Whenever the NRC notifies a submitter of its final decision to disclose the requested information under paragraph (c) of this section, the NRC shall also notify the requester(s). When a submitter files a lawsuit seeking to prevent the disclosure of trade secrets or confidential commercial or financial information, the NRC shall notify the requester(s).

(e) *Notice to submitter of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to compel disclosure of trade secrets or confidential commercial or financial information, the NRC shall promptly notify the submitter.

8. Section 9.29 is revised to read as follows:

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for access to agency records, denial of a request for waiver or reduction of fees, or denial of a request for expedited processing under this subpart within 30 calendar days of the date of the NRC's denial.

(b) For agency records to which access is denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an ''Appeal from Initial Freedom of Information Act Decision.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Inspector General will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Inspector General denies an appeal of access to records, in whole or in part, the Inspector General will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(c) For agency records to which access is denied by the Executive Assistant to the Secretary of the Commission, the General Counsel, or an office director reporting to the Commission, the appeal must be in writing directed to the Secretary of the Commission and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an ''Appeal from Initial Freedom of Information Act Decision.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Secretary of the Commission will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Secretary of the Commission denies an appeal of access to records, in whole or in part, the Secretary of the Commission will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) For agency records to which access is denied by agency officials other than the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, the General Counsel, or other office director reporting to the Commission, the appeal must be in

writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an ''Appeal from Initial FOIA Decision.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Executive Director for Operations or a Deputy Executive Director will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of access to records, in whole or in part, the Executive Director for Operations or a Deputy Executive Director, will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(e) For the denial of a request for expedited processing the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an ''Appeal from Initial FOIA Decision.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 10 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal for expedited processing, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.25(e)(1) and (2). The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(f) For denial of a waiver or reduction of fees for locating and reproducing agency records, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an ''Appeal from Initial FOIA Decision.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of a waiver or reduction of fees for locating and reproducing agency records, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.41. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(g) The Executive Director for Operations, a Deputy Executive Director, the Secretary of the Commission, or the Inspector General will furnish copies of all appeals and written determinations on appeals to the Freedom of Information Act and Privacy Act Officer.

9. In § 9.35, paragraph (d) is revised to read as follows:

§ 9.35 Duplication fees.

* * * * *

(d) Copyrighted material may not be reproduced in violation of the copyright laws. As such, requesters will be given the citation to any copyrighted publication and advised to contact the NRC Public Document Room to arrange to view the publication.

10. In § 9.40, paragraph (f) is revised to read as follows:

§ 9.40 Assessment of fees.

* * * * *

(f) If the NRC receives a new request and determines that the requester has previously failed to pay a properly charged fee under the Freedom of Information Act to the NRC or other Federal agency within 30 calendar days of receipt of the bill on a previous request, the NRC may refuse to accept the new request for processing until payment is made of the full amount owed on the prior request, plus any applicable interest assessed as provided in § 9.34.

* * * * *

11. In § 9.43, paragraph (d) is revised to read as follows:

§ 9.43 Processing requests for a waiver or reduction of fees.

* * * * *

(d) As provided in § 9.29, a requester may appeal a denial of a request to waive or reduce fees to the Executive Director for Operations. The appeal must be submitted within 30 calendar days from the date of the notice.

12. In § 9.53, paragraph (b) is revised to read as follows:

§ 9.53 Requests; how and where presented.

* * * * *

(b) All written requests shall be made to the Freedom of Information Act and Privacy Act Officer, U.S. Nuclear Regulatory Commission, and sent by an appropriate method listed in § 9.6, and should clearly state on the envelope and in the letter, as appropriate: ''Privacy Act Request,'' ''Privacy Act Disclosure Accounting Request,'' ''Privacy Act Correction Request.'' The NRC does not consider a request received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

13. In § 9.54 paragraph (a)(1) is revised as follows:

§ 9.54 Verification of identity of individuals making requests.

(a) * * *

(1) *Written requests*. An individual making a written request respecting a record about himself may establish his identity by a signature, address, date of birth, employee identification number, if any, and one other item of identification such as a copy of a driver's license or other document.

* * * * *

14. In § 9.61 the introductory text of paragraph (c), the introductory text of paragraph (c)(1), and paragraph (c)(1)(i) are revised to read as follows:

§ 9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(c) *Specific exemptions pursuant to 5 U.S.C. 552a(k)*. Individual requests for access to records which have been exempted from access pursuant to the provisions of 5 U.S.C. 552a(k) shall be processed as follows:

(1) *Information classified pursuant to criteria established by an Executive Order to be kept secret in the interest of*

national defense or foreign policy, and exempted pursuant to 5 U.S.C. 552a(k)(1).

(i) Requested information classified by NRC will be reviewed by the responsible official of the NRC to determine whether it continues to warrant classification under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy.

* * * * *

15. Section 9.62 is revised to read as follows:

§ 9.62 Records under control of another Government agency.

Requests received by NRC pertaining to records under the control of another Government agency will be returned to the requester with the name of the controlling Government agency, if known, within ten working days after receipt by the NRC.

16. In § 9.65, paragraph (b) is revised to read as follows:

§ 9.65 Access determinations; appeals.

* * * * *

(b) *Appeals from denials of access.* If an individual has been denied access to a record the individual may request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. A request for final review of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. For agency records denied by the Freedom of Information Act and Privacy Act Officer, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter ''Privacy Act Appeal-Denial of Access.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

17. In § 9.66, paragraph (b) is revised to read as follows:

§ 9.66 Determinations authorizing or denying correction of records; appeals.

* * * * *

(b) *Appeals from initial adverse determinations.* If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may appeal that action and request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. An appeal of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. For agency records denied by the Freedom of Information Act and Privacy Act Officer the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter ''Privacy Act Correction Appeal.'' The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. Requests for final review must set forth the specific item of information sought to be corrected or amended and should include, where appropriate, records supporting the correction or amendment.

* * * * *

18. In § 9.67, paragraph (a) is revised to read as follows:

§ 9.67 Statements of disagreement.

(a) Written ''Statements of Disagreement'' may be furnished by the individual within 30 calendar days of the date of receipt of the final adverse determination of the Inspector General or the Executive Director for Operations. ''Statements of Disagreement'' directed to the Executive Director for Operations must be sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6, and should be clearly marked on the statement and on the envelope, ''Privacy Act Statement of Disagreement.'' ''Statements of Disagreement'' directed to the Inspector General must be sent to the Freedom of Information Act and Privacy Officer by an appropriate method listed in § 9.6, and should be clearly marked on the statement and on the envelope ''Privacy Act Statement of Disagreement.''

* * * * *

19. Section 9.85 is revised to read as follows:

§ 9.85 Fees.

Fees shall not be charged for search or review of records requested under this subpart or for making copies or extracts of records in order to make them available for review, although fees may be charged for additional copies. Fees established under 31 U.S.C. 483c and 5 U.S.C. 552a(f)(5) shall be charged according to the schedule contained in § 9.35 of this part for actual copies of records disclosed under the Freedom of Information Act from Privacy Act Systems of Records.

20. Section 9.95 is revised to read as follows:

§ 9.95 Specific exemptions.

Exemptions applicable to Privacy Act Systems of Records are stated in each Privacy Act System of Records Notice which is published in the **Federal Register** and is available at the NRC Web site, *http://www.nrc.gov*.

Dated in Rockville, Maryland, this 21st day of April, 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–9488 Filed 4–26–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–37–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 and EMB–135 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 and EMB–135 series airplanes. This proposal would require replacement of the engine-driven hydraulic pump. This action is necessary to prevent oil leakage at the coupling seal between the hydraulic pump and the engine gearbox from causing low engine oil levels, which could lead to in-flight engine shutdown and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 27, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–37–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. 2004–NM–37–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2004–NM–37–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. 2004–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 and EMB–135 series airplanes. The DAC advises that operators have reported three cases of in-flight engine shutdown due to low engine oil levels caused by oil leakage at the coupling seal between the engine-driven hydraulic pump and the engine gearbox. This condition, if not corrected, could result in in-flight engine shutdown and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletins 145–29–0018, Revision 03 (for Model EMB–145 and EMB–135 series airplanes, except for EMB–135BJ series airplanes), dated December 2, 2003; and 145LEG–29–0001, Revision 01 (for Model EMB–135BJ series airplanes), dated November 11, 2003. These service bulletins describe procedures for replacement of the engine-driven hydraulic pump with a new or modified pump. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2004–01–03, dated January 29, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

The service bulletins refer to EATON Service Bulletin 971808–29–02, dated May 1, 2001, as an additional source of service information for accomplishing the modification of the hydraulic pump. The EATON service bulletin is included in the EMBRAER service bulletins.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Foreign AD

The DAC states that Brazilian airworthiness directive 2004–01–03, dated January 29, 2004, is applicable to ''all EMB–145 and EMB–135 aircraft models in operation.'' However, this does not agree with EMBRAER Service Bulletin 145–29–0018, Revision 03, dated December 2, 2003, and Service Bulletin 145LEG–29–0001, Revision 01, dated November 11, 2003, which state that only certain EMB–145 and EMB–135 airplanes with certain serial numbers are affected. This proposed AD would be applicable only to the airplanes listed in the service bulletins. This difference has been coordinated with the DAC.

Cost Impact

The FAA estimates that 548 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. The manufacturer

will provide replacement parts at no cost. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $142,480, or $260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2004–NM–37–AD.

Applicability: Model EMB–145 and EMB–135 series airplanes, certificated in any category, as listed in EMBRAER Service Bulletin 145–29–0018, Revision 03, dated December 2, 2003; and EMBRAER Service Bulletin 145LEG–29–0001, Revision 01, dated November 11, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent oil leakage at the coupling seal between the hydraulic pump and the engine gearbox from causing low engine oil levels, which could lead to in-flight engine shutdown and consequent reduced controllability of the airplane, accomplish the following:

Service Bulletin References

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

(1) For Model EMB–145 and EMB–135 (except Model EMB–135BJ) series airplanes: EMBRAER Service Bulletin 145–29–0018, Revision 03, dated December 2, 2003; and

(2) For Model EMB–135BJ series airplanes: EMBRAER Service Bulletin 145LEG–29–0001, Revision 01, dated November 11, 2003.

Note 1: EATON Service Bulletin 971808–29–02, dated May 1, 2001, has been incorporated into the EMBRAER service bulletins as an additional source of service information for accomplishing the modification of the hydraulic pump.

Replacement of Hydraulic Pump

(b) Within 1,000 flight hours after the effective date of this AD, replace the engine-driven hydraulic pump, part number (P/N) 971808, with a new or modified pump, P/N 971808 MOD A, in accordance with the Accomplishment Instructions of the applicable service bulletin.

Parts Installation

(c) As of the effective date of this AD, no person may install a hydraulic pump having P/N 971808 on any airplane, unless that pump has been modified and reidentified as P/N 971808 MOD A, per Part II of the Accomplishment Instructions of the applicable service bulletin.

Actions Accomplished Per Previous Issues of Service Bulletins

(d) Actions accomplished before the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1.—PREVIOUS ISSUES OF SERVICE BULLETINS

EMBRAER service bulletin	Revision and date
145–29–0018	Original Issue, June 6, 2002.
145–29–0018	Revision 01, October 9, 2002.
145–29–0018	Revision 02, August 25, 2003.
145LEG–31–0001	Original Issue, October 9, 2002.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2004–01–03, dated January 29, 2004.

Issued in Renton, Washington, on April 16, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9499 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 and 900 Series Airplanes, and Model Falcon 2000 and 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 2000 and 900EX series airplanes. This proposal would require temporary changes to the Airplane Flight Manual to prohibit the use of certain functions depending on whether or not the operator chooses to deactivate the global positioning system (GPS). For airplanes on which the GPS is deactivated, this proposal would require installing a deactivation locking collar on certain circuit breakers. For certain airplanes, this proposal would also require modifying the wiring of the global

positioning/inertial reference system. This action is necessary to prevent the erroneous display of speed to the flightcrew, when using certain functions, which could cause the flightcrew to lose situational awareness, and possibly lose control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 27, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–244–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–244–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 2000 and 900EX series airplanes. The DGAC advises that the global positioning/inertial reference system (GP/IRS) that computes speeds using input from both the global positioning system (GPS) and the inertial reference system (IRS) may receive erroneous information from the GPS. The hybrid speeds that the GP/IRS computes are used to enhance the accuracy of some navigation information. However, the inputs received from the GPS are not checked for accuracy, which can cause the GP/IRS to compute erroneous parameters from the GPS speed data. This condition, if not corrected, could result in the erroneous display of speed to the flightcrew, when using certain functions, which could cause the flightcrew to lose situational awareness, and possibly lose control of the airplane.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F2000–273, Revision 1, dated October 29, 2003; Falcon Service Bulletin F900EX–181, Revision 1, dated October 29, 2003; Service Bulletin F900–318, Revision 1, dated October 15, 2003; and Falcon 50 Service Bulletin F50–416, dated October 29, 2003. These service bulletins describe procedures for modifying the GP/IRS wiring to ensure that the GP/IRS does not receive hybrid data from the GPS and the IRS. This modification includes modifying certain strapping and disconnecting and stowing certain wires, as applicable, depending on the airplane configuration.

Dassault has also issued the following temporary changes (TC) to the Airplane Flight Manuals (AFM). These TCs prohibit the use of certain functions, depending on whether or not the operator chooses to deactivate the GPS prior to further flight.

- TC 15 to the Mystere-Falcon 900 AFM, Document FM900C, dated September 23, 2003.
- TC 57 to the Falcon 900EX AFM, Document DTM561, dated September 23, 2003.
- TC 61 to the Mystere-Falcon 50 AFM, Document FM813EX, dated September 23, 2003.
- TC 122 to the Falcon 2000 AFM, Document DTM 537, dated September 23, 2003.

The DGAC classified these service bulletins and TCs to the AFMs as mandatory and issued French airworthiness directive 2003–409(B), dated October 29, 2003 to ensure the continued airworthiness of these airplanes in France.

Should an operator choose to de-activate the GPS, Service Bulletin F2000–285, dated October 15, 2003; Service Bulletin F900EX–190, dated October 15, 2003; Service Bulletin F900–324, dated October 15, 2003; and Service Bulletin F50–424, dated October 29, 2003; describe procedures for deactivating the GPS by installing a locking collar on certain circuit breakers on the overhead panel.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral

airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins and TCs described previously, except as discussed below.

Difference Between the Proposed AD and Some Service Bulletins

Operators should note that, although the Accomplishment Instructions of some of the referenced service bulletins describe procedures for submitting a reporting card to the manufacturer, this proposed AD would not require those actions.

Differences Between French Airworthiness Directive and This Proposed AD

For the AFM revisions, the French airworthiness directive specifies a compliance time of before the next flight following the effective date of that AD. This proposed AD provides a compliance time of 7 days after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, we considered the DGAC's recommendation, as well as the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that a 7-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

The applicability of the French airworthiness directive excludes airplanes that accomplished Dassault Service Bulletins F2000–273, F900EX–181, F900–318, or F50–416, as applicable, in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins. Such a requirement would ensure that the actions specified in the service bulletins and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Interim Action

We consider this proposed AD interim action for Model Falcon 2000 series airplanes equipped with head-up display; for Model Falcon 900EX series airplanes; and for Model Mystere-Falcon 900 series airplanes. If final action is later identified, we may consider further rulemaking then.

Cost Impact

The FAA estimates that 543 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed temporary changes to the Airplane Flight Manual, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $35,295, or $65 per airplane.

For airplanes that require the wiring modification proposed by this AD, we estimate that it would take approximately 2 work hours per airplane to accomplish the modification. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $130 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2002–NM–244–AD.

Applicability: Model Mystere-Falcon 50 and Model Falcon 2000 series airplanes equipped with Global Positioning/Inertial Reference System (GP/IRS) part number (P/N) HG2001–GC02, P/N HG2001–GC03, or P/N HG2001–GD03; Model Mystere-Falcon 900 and Model Falcon 900EX series airplanes equipped with GP/IRS P/N HG2001–GC03 or P/N HG2001–GD03; except those airplanes on which one of the following has been incorporated during production: Dassault Modification M2004, M3386, or M2873; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the erroneous display of speed to the flightcrew, when using certain functions, which could cause the flightcrew to lose situational awareness, and possibly lose control of the airplane, accomplish the following:

Service Bulletin Reference

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

(1) For the installation specified in paragraph (c) of this AD, the applicable service bulletin in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS FOR PARAGRAPH (C) INSTALLATION

Service bulletin	Date	Model
F2000–285	October 15, 2003	Falcon 2000.
F900EX–190	October 15, 2003	Falcon 900EX.
F900–324	October 15, 2003	Mystere-Falcon 900.
F50–424	October 29, 2003	Mystere-Falcon 50.

(2) For the modification specified in paragraph (d) of this AD, the applicable service bulletin in Table 2 of this AD. Although the Accomplishment Instructions of some of these service bulletins describe procedures for submitting a reporting card to the manufacturer, this AD does not require those actions.

TABLE 2.—SERVICE BULLETINS FOR PARAGRAPH (D) MODIFICATION

Service bulletin	Revision	Date	Model
F2000–273	1	October 29, 2003	Falcon 2000 equipped with head-up display (HUD).
F900EX–181	1	October 29, 2003	Falcon 900EX.
F900–318	1	October 15, 2003	Mystere-Falcon 900.
F50–416	Original	October 29, 2003	Mystere-Falcon 50.

Airplane Flight Manual Revisions

(b) Within 7 days after the effective date of this AD: Revise the Airplane Flight Manual (AFM) by accomplishing paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this AD, as applicable. Thereafter, operate the airplane per the limitations specified in these AFM revisions.

(1) Revise the Limitations Section to include the information in TC 15 to the Mystere-Falcon 900 AFM, Document FM900C, dated September 23, 2003.

(2) Revise the Limitations Section to include the information in TC 57 to the Falcon 900EX AFM, Document DTM561, dated September 23, 2003.

(3) Revise the Limitations Section to include the information in TC 61 to the Mystere-Falcon 50 AFM, Document FM813EX, dated September 23, 2003.

(4) Revise the Limitations Section to include the information in TC 122 to the Falcon 2000 AFM, Document DTM537, dated September 23, 2003.

Note 1: When the information in TCs 15, 57, 61, and 122 has been included in general revisions of the AFM, the TCs may be removed from the AFM, provided the relevant information in the general revision is identical to that in TCs 15, 57, 61, and 122.

Installation of Deactivation Locking Collars

(c) For airplanes on which the GPS is deactivated in accordance with the applicable TC specified in paragraph (b) of this AD: Prior to further flight, install a deactivation locking collar on each GPS 1 and GPS 2 circuit breaker in accordance with the applicable service bulletin. This installation constitutes terminating action for the requirements of this AD for Model Falcon 2000 series airplanes that are not equipped with head-up display (HUD), and for Model Mystere-Falcon 50 series airplanes.

Wiring Modification

(d) For Model Falcon 2000 series airplanes equipped with HUD; for Model Falcon 900EX series airplanes; and for Model Mystere-Falcon 900 series airplanes: Within 25 months after the effective date of this AD, modify the GP/IRS wiring in accordance with the applicable service bulletin. After this modification has been completed, the applicable TC required by paragraph (b) of this AD may be removed from the AFM.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–409(B), dated October 29, 2003.

Issued in Renton, Washington, on April 16, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9500 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of Negotiated Rulemaking Committee meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces the June meeting of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C–DAC). The Committee will review summary notes of the prior meeting and review draft regulatory text. The meeting will be open to the public.

DATES: The meeting will be on June 2, 3, and 4, 2004. The meeting will begin each day at 8:30 a.m. The meeting is expected to last two and a half days. Individuals with disabilities wishing to attend should contact Luz Dela Cruz by telephone at 202–693–2020 or by fax at 202–693–1689 to obtain appropriate accommodations no later than Friday, May 21, 2004.

ADDRESSES: The June meeting will be held at the Home Builders Association of Central Arizona facility located at 3200 East Camelback Road, Suite 180, Phoenix, AZ 85018.

Written comments to the Committee may be submitted in any of three ways: by mail, by fax, or by e-mail. Please include ''Docket No. S–030'' on all submissions.

By mail: submit three (3) copies to: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax: written comments that are 10 pages or fewer may be transmitted to the OSHA Docket Office at fax number (202) 693–1648.

Electronically: comments may be submitted through OSHA's Web page at *http://www.ecomments.osha.gov*. Please

note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Audrey Rollor, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee to improve crane and derrick safety in construction, requesting comments and nominations for membership (67 FR 46612). In subsequent notices the Department of Labor announced the establishment of the Committee (68 FR 35172, June 12, 2003), requested comments on a list of proposed members (68 FR 9036, February 27, 2003), published a final membership list (68 FR 39877, July 3, 2003), and announced the first meeting, (68 FR 39880, July 3, 2003), which was held July 30–August 1, 2003. The Agency published notices announcing the subsequent meetings.

II. Agenda

At the June meeting, the Committee will primarily review draft materials prepared by the Agency based on CDAC discussions at prior meetings. OSHA anticipates that CDAC will be reviewing draft regulatory text of items mentioned below on the ''Anticipated Key Issues for Negotiation'' list.

III. Anticipated Key Issues for Negotiation

OSHA anticipates that CDAC will continue discussing key issues from the following list in upcoming meetings:

1. Scope.
2. General Requirements.
3. Assembly/Disassembly.
4. Operation—Procedures.
5. Authority to Stop Operation.
6. Signals.
7. Requirements for equipment with a manufacturer-rated hoisting/lifting capacity below 2,000 pounds.
8. Operational Aids/Safety Devices.
9. Inspections.
10. Equipment Modifications.
11. Personnel Training.
12. Wire Rope.
13. Operator Qualifications.
14. Keeping Clear of the Load.
15. Fall Protection (ladder access and catwalks, fall arrest).
16. Hoisting Personnel.
17. Qualifications of Maintenance & Repair Workers.
18. Machine Guarding.
19. Responsibility for environmental considerations, site conditions, ground conditions.
20. Work Zone Control (access/egress).
21. Power line safety.
22. Derricks.
23. Verification criteria for structural adequacy of crane components and stability testing requirements.
24. Floating Cranes & Cranes on Barges.
25. Free Fall/Power Down.
26. Multiple Crane Lifts.
27. Tower Cranes.
28. Operator Cab Criteria.
29. Overhead & Gantry Cranes.
30. Definitions.

IV. Public Participation

All interested parties are invited to attend the June public meeting at the time and place indicated above. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Luz Dela Cruz by telephone at 202–693–2020 or by fax at 202–693–1689 to obtain appropriate accommodations no later than Friday, May 21, 2004. The meeting is expected to last two and a half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 693–2350. Minutes will also be available on the OSHA Docket Web page: *http://www.dockets.osha.gov/*.

The Facilitator, Susan Podziba, can be reached at Susan Podziba and Associates, 21 Orchard Road, Brookline, MA 02445; telephone (617) 738–5320, fax (617) 738–6911.

Signed in Washington, DC, this 21st day of April, 2004.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 04–9510 Filed 4–26–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–027]

RIN 1625–AA09

Drawbridge Operation Regulations; Chelsea River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the P.J. McArdle Bridge, mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. This proposed rule would allow the bridge to need not open for the passage of vessel traffic from 10 a.m. to 5 p.m. on June 5, 2004, to facilitate the First Annual Chelsea River Revel 5K Road Race. Vessels that can pass under the bridge without a bridge opening may do so at all times.

DATES: Comments and related material must reach the Coast Guard on or before May 17, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, 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 the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–027), 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 8 1/2 by 11 inches, suitable for copying. If you would like to know if 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 the First Coast Guard District, Bridge Branch, 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**.

Background

The P.J. McArdle Bridge has a vertical clearance of 21 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations listed at 33 CFR 117.593 require the bridge to open on signal at all times.

The owner of the bridge, the City of Boston, requested a temporary change to the drawbridge operation regulations to allow the bridge to need not open for the passage of vessel traffic from 10 a.m. to 5 p.m. on June 5, 2004, to facilitate the running of the First Annual Chelsea River Revel 5K Road Race. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Chelsea River is predominantly transited by commercial tugs, barges, and oil tankers. The Coast Guard coordinated this closure with the mariners that normally use this waterway and no objections were received.

The Coast Guard did not receive the request to keep the bridge closed to facilitate the scheduled road race until March 16, 2004. A shortened comment period is necessary, due the short notice given to the Coast Guard, to allow a final rule to be issued in time for the start of First Annual Chelsea River Revel 5K Road Race on June 5, 2004.

The Coast Guard believes this proposed rule is reasonable in order to provide for public safety and the safety of the race participants.

Discussion of Proposal

This proposed change would suspend § 117.593 and temporarily add a new § 117.T594.

Under the new temporary section all drawbridges across the Chelsea River would open on signal; except that the P.J. McArdle Bridge, mile 0.3, need not open for the passage of vessel traffic from 10 a.m. to 5 p.m. on June 5, 2004.

The opening signal for each drawbridge would remain as two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal would remain as three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will be closed for a relatively short period of time in the interest of public safety during the running of the 5K road race.

Small Entities

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

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

This conclusion is based on the fact that the bridge will be closed for a relatively short period of time in the interest of public safety during the running of the 5K road race.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this 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 proposed rule under Commandant Instruction M16475.1D, 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 (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. On June 5, 2004, § 117.593 is suspended and a new § 117.T594 is added to read as follows:

§ 117.T594 Chelsea River.

(a) All drawbridges across the Chelsea River shall open on signal; except that the P.J. McArdle Bridge, mile 0.3, need not open for the passage of vessel traffic from 10 a.m. to 5 p.m. on June 5, 2004.

(b) The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Dated: April 9, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–9482 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–016]

RIN 1625–AA00

Security Zone; Military Ocean Terminal Sunny Point and Lower Cape Fear River, Brunswick County, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard proposes implementing a permanent security zone on the Cape Fear River at Military Ocean Terminal Sunny Point (MOTSU), North Carolina. Entry into or movement within the security zone will be prohibited without authorization from the Captain of the Port (COTP). This action is necessary to safeguard the vessels and the facility from sabotage, subversive acts, or other threats.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2004.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401. The Port Operations Department, Waterways Management Division 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 Coast Guard Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Charles A. Roskam II, Chief Port Operations (910) 772–2200 or toll free (877) 229–0770.

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 (CGD05–04–016), 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 that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

Vessels frequenting the Military Ocean Terminal Sunny Point (MOTSU) facility serve as a vital link in the transportation of military munitions and explosives in support of Department of Defense missions at home and abroad. This vital transportation link is potentially at risk to acts of terrorism, sabotage and other criminal acts. Munitions and explosive laden vessels also pose a unique threat to the safety and security of the MOTSU facility, vessel crews, and others in the maritime community and the surrounding community should the vessels be

subject to acts of terrorism or sabotage, or other criminal acts. The ability to control waterside access to munitions and explosive laden vessels moored to the MOTSU facility is critical to national defense and security, as well as to the safety and security of the MOTSU facility, vessel crews, and others in the maritime community and the surrounding community. Therefore, the Coast Guard proposes to establish this security zone to safeguard human life, vessels and facilities from sabotage, terrorist acts or other criminal acts.

Discussion of Proposed Rule

The proposed rule is for a permanent security zone located on the Cape Fear River, North Carolina adjacent to the MOTSU facility and includes the area bound by the following points: beginning at a point located at 34°02.03′ N, 077°56.60′ W near Cape Fear River Channel Lighted Buoy 9 (LLNR 30355), extending south along the shore to 34°00.00′ N, 077°57.25′ W, proceeding to the southern most tip of the Zone at 33°59.16′ N, 077°57.00′ W at then proceeding north to 34°00.65′ N, 077°56.41′ W at Cape Fear River Channel Lighted Buoy 31(LLNR 30670 & 39905) back to the point of origin at 34°02.03′ N, 077°56.60′ W.

The security zone is necessary to protect MOTSU and vessels moored at the facility, their crews, others in the maritime community and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

No person or vessel may enter or remain in the security zone at any time without the permission of the Captain of the Port, Wilmington. Each person or vessel operating within the security zone must obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from this security zone.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the security zone, the effect of this regulation will not be significant because: (i) The COTP or his or her representative may authorize access to the security zone; (ii) the security zone will be enforced for limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the vicinity of Military Ocean Terminal Sunny Point. This includes owners and operators of vessels entering the zone.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone is not located in an area that would impede commercial or recreational traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Charles A. Roskam II, Chief, Port Operations (910) 772–2200 or toll free (877) 229–0770.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T05–016 to read as follow:

§ 165.T05–016—Security Zone: Military Ocean Terminal Sunny Point and Lower Cape Fear River, NC.

(a) *Location.* The following area is a security zone: the area and waters bound by the following points: beginning at a point located at 34°02.03′ N, 077°56.60′ W near Cape Fear River Channel Lighted Buoy 9 (LLNR 30355), extending south along the shore to 34°00.00′ N, 077°57.25′ W, proceeding south to 33°59.16′ N, 077°57.00′ W at then proceeding north to 34§ 00.65' N, 077°56.41′ W at Cape Fear River Channel Lighted Buoy 31(LLNR 30670 & 39905) back to the point of origin at 34°02.03′ N, 077°56.60′ W.

(b) *Captain of the Port.* As used in this section, *Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his or her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels with a need to enter into or pass through the security zone, must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 772–2000 or toll free (877) 229–0770.

(d) *Enforcement.* The Captain of the Port may be assisted by the U.S. Army in the patrol and enforcement of this security zone.

Dated: April 8, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.

[FR Doc. 04–9481 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–102]

RIN 1625–AA00

Safety Zones; Coast Guard Activities New York Fireworks Displays

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish five permanent safety zones for fireworks displays located in Pierhead Channel, NJ; Lower New York Bay; Raritan Bay; Long Island Sound; the Hudson River; and revise the section title. This action is necessary to protect the life and property of the maritime public from the hazards posed by these events. Entry into or movement within these proposed zones during the effective periods is prohibited without approval of the Captain of the Port (COTP), New York.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2004.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–03–102), Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305. The Waterways Oversight Branch of Coast Guard Activities New York 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 the Waterways Oversight Branch, room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

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 (CGD01–03–102), 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 the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish five permanent safety zones that will be enforced for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these five locations. The five locations are in Pierhead Channel, NJ, north of the Kill Van Kull Channel; Lower New York Bay, southeast of Midland Beach; Raritan Bay east of Wolfes Pond Park; Long Island Sound, east of Orchard Beach; and the Hudson River, east of Newburgh, NY. The Coast Guard received 14 applications for fireworks displays in these new areas between June and September 2003. There were no fireworks displays at these sites in calendar year 2000. A temporary safety zone was established for each display, with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing five permanent safety zones by notice and comment rulemaking would provide the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has not received notice of any impact to waterway traffic resulting from the enforcement of the zones. Marine traffic would still be able to pass safely around the proposed safety zones because the zone prohibits vessels from entering only the actual zone. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zones.

This proposed rule would revise 33 CFR 165.168 by adding five permanent safety zones to the 34 existing ones and would revise the section's title to identify the Coast Guard Captain of the Port zone where the safety zones are located instead of listing all affected waterways.

We also propose to remove the four figures in the regulation showing the overview of the safety zone locations. These will be made available in the ''USCG Notices'' section online at: *http://www.harborops.com*. Mariners are also able to plot these positions on their own navigation charts.

This proposed rule and the current safety zones in 33 CFR 165.168 are for fireworks displays using 12″ shells. We will enforce a smaller safety zone for displays in these locations that use fireworks shells smaller than 12″. However, the boundary will still be located within the listed safety zone boundary of this regulation for fireworks displays using shells smaller than 12″.

Discussion of Proposed Rule

Pierhead Channel, NJ Safety Zone

The proposed safety zone includes all waters of Pierhead Channel and the Kill Van Kull within a 360 yard radius of the fireworks barge in approximate position 40°39′18.8″ N, 074°04′39.1″ W (NAD 1983), about 315 yards north of the Kill Van Kull Channel. The proposed safety zone prevents vessels from transiting a portion of Pierhead Channel and the Kill Van Kull and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely through the eastern 175 yards of the 460-yard wide Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull.

Midland Beach, Staten Island Safety Zone

The proposed safety zone includes all waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34′12.0″ N, 074°04′29.6″ W (NAD 1983), about 800 yards southeast of Midland Beach. The proposed safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone. The size of this proposed zone would be 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display would be within 360 yards of the fireworks barge. This 360-yard safety zone would be wholly contained within this proposed 500-yard safety zone.

Wolfes Pond Park, Staten Island Safety Zone

The proposed safety zone includes all waters of Raritan Bay within a 500 yard radius of the fireworks barge in approximate position 40°30′52.1″ N 074°10′58.8″ W (NAD 1983), about 540 yards east of Wolfes Pond Park. The proposed safety zone would prevent vessels from transiting a portion of Raritan Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone. The size of this proposed zone would be 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display would be within 360-yards of the fireworks barge. This 360-yard safety zone would be wholly contained within this proposed 500-yard safety zone.

Orchard Beach, The Bronx, Safety Zone

The proposed safety zone includes all waters of Long Island Sound in an area bound by the following points: 40°51′43.5″ N 073°47′36.3″ W; thence to 40°52′12.2″ N 073°47′13.6″ W; thence to 40°52′02.5″ N 073°46′47.8″ W; thence to 40°51′32.3″ N 073°47′09.9″ W (NAD 1983), thence to the point of origin. The proposed safety zone prevents vessels from transiting a portion of Long Island Sound and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone. This safety zone is shaped to allow the sponsor the flexibility to use one or two barges per display.

Newburgh, NY, Safety Zone

The proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30′01.2″ N 073°59′42.5″ W (NAD 1983), about 930 yards east of Newburgh, NY. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone.

The proposed size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area. Proposed barge

locations and mortar sizes were adjusted to try and ensure the proposed safety zone locations would not interfere with any known marinas or piers.

The Coast Guard does not know the actual dates that these safety zones will be enforced at this time. Coast Guard Activities New York will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners, electronic mail distribution, and on the Internet at *http://www.harborops.com*. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that the notice of the enforcement of each permanent safety zone in this rulemaking will normally be made between thirty and twenty one days before the zone is actually enforced. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled ''FIREWORKS—STAY AWAY''. This will provide on-scene notice that the safety zone is or will be enforced on that day. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce the safety zone.

The effective period for these proposed safety zones is from 6 p.m. to 1 a.m. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zone will be active.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels may still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. Vessels may also still transit through Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners, electronic mail distribution, and on the Internet at *http://www.harborops.com*. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that these safety zones will only be enforced 18–20 times per year.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River, during the times these proposed zones are enforced.

These proposed safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could pass safely around the safety zones. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by Local Notice to Mariners, electronic mail distribution, and on the Internet at *http://www.harborops.com*. Marine information and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed 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. This rule fits the category selected from paragraph (34)(g) as it would establish five safety zones.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. In § 165.168—

a. Revise the section heading;

b. Revise paragraph (a) introductory text, and add paragraphs (a)(10), (a)(11) and (a)(12);

c. Revise paragraph (b) introductory text, and add paragraph (b)(11);

d. Revise paragraph (c) introductory text;

e. Revise paragraph (d) introductory text, and add paragraph (d)(12); and

f. Remove figures 1 through 4 at the end of the section.

g. In paragraph (f), remove the word ''*Effective*'' from the paragraph heading and add in its place the word ''*Enforcement*'' and in the first sentence of the paragraph remove the words ''is effective'' and add in their place the words ''will be enforced''.

The revisions, removals, and additions read as follows:

§ 165.168 Safety Zones; Coast Guard Activities New York Fireworks Displays.

(a) *New York Harbor.* The following areas are safety zones:

* * * * *

(10) *Pierhead Channel, NJ Safety Zone:* All waters of Pierhead Channel and the Kill Van Kull within a 360-yard radius of the fireworks barge in approximate position 40°39′18.8″ N 074°04′39.1″ W (NAD 1983), approximately 315 yards north of the Kill Van Kull Channel.

(11) *Midland Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W (NAD 1983), approximately 800 yards southeast of Midland Beach.

(12) *Wolfes Pond Park, Staten Island Safety Zone:* All waters of Raritan Bay within a 500-yard radius of the fireworks barge in approximate position 40°30′52.1″ N 074°10′58.8″ W (NAD 1983), approximately 540 yards east of Wolfes Pond Park.

(b) *Western Long Island Sound.* The following areas are safety zones:

* * * * *

(11) *Orchard Beach, The Bronx, Safety Zone:* All waters of Long Island Sound in an area bound by the following points: 40°51′43.5″ N 073°47′36.3″ W; thence to 40°52′12.2″ N 073°47′13.6″ W; thence to 40°52′02.5″ N 073°46′47.8″ W; thence to 40°51′32.3″ N 073°47′09.9″ W (NAD 1983), thence to the point of origin.

(c) *East River.* The following areas are safety zones:

* * * * *

(d) *Hudson River.* The following areas are safety zones:

* * * * *

(12) *Newburgh, NY, Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30′01.2″ N 073°59′42.5″ W (NAD 1983), approximately 930 yards east of Newburgh, NY.

* * * * *

Dated: April 13, 2004.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 04–9554 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AE91

Schedule for Rating Disabilities; the Musculoskeletal System

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Veterans Affairs (VA) is withdrawing its proposal to amend that portion of its Schedule for Rating Disabilities that addresses musculoskeletal conditions, and related regulations, published in the **Federal Register** on February 11, 2003 (68 FR 6998). Nine commenters responded, raising numerous issues. VA has considered the issues and believes a new proposal is appropriate. Accordingly, VA is withdrawing the proposal and is developing a new proposal, which it intends to publish at a later date.

FOR FURTHER INFORMATION CONTACT: Audrey Tomlinson, Medical Officer, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7215.

Approved: March 5, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–9471 Filed 4–26–04; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register

Vol. 69, No. 81

Tuesday, April 27, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Nutrition Education Systems Review

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's (FNS) intent to request approval from the Office of Management and Budget (OMB) for a new information collection from State officials, as well as from implementing agency, partnering agency, and local project staff administering Food Stamp Program nutrition education (FSNE) efforts. This information will be used to gain a comprehensive understanding of the administration and activities of the various nutrition education programs currently provided to the food stamp population. It will also help plan the direction of FSNE activities and practices in the future.

DATES: Written comments on this notice must be received on or before June 28, 2004 to be assured consideration.

ADDRESSES: Send comments to Kristen Dowling Hyatt, Project Officer, Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Service, USDA, 3101 Park Center Drive, Suite 1014, Alexandria, Virginia, 22302. Submit electronic comments to *kristen.hyatt@fns.usda.gov*.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), 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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for OMB approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kristen Dowling Hyatt, (703) 305–2135.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Nutrition Education Systems Review.

OMB Number: Not yet assigned.

Expiration Date: To be determined.

Type of Request: New collection of information.

Abstract: As the cornerstone of the USDA nutrition assistance programs, the Food Stamp Program (FSP) plays a vital role in helping to protect the nutrition, health, and well being of over 23 million low-income Americans. Under current FSP regulations (7 CFR 272.2), State food stamp agencies have the option to include nutrition education for program participants as part of their administrative operations. The goal of food stamp nutrition education (FSNE) is to increase the likelihood that food stamp recipients make healthy food choices and choose an active lifestyle consistent with the principles of the Dietary Guidelines for Americans and the Food Guide Pyramid.

State food stamp agencies that choose to participate in FSNE submit an annual food stamp nutrition education plan to FNS outlining their intended activities and budget for the upcoming year. USDA reimburses States with approved plans for 50 percent of the allowable administrative costs actually expended on FSNE operations. While State food stamp agencies are responsible for submitting a single FSNE plan, services are generally provided through agreements with one or more ''implementing agencies'' that develop and deliver the nutrition education. The State Cooperative Extension Service is the predominant implementing agency; however, public health departments, public assistance agencies, and university academic centers also sponsor FSNE. Implementing agencies usually deliver nutrition education to food stamp recipients through local organizations or projects. They may also develop collaborative relationships with community and private agencies, and other FNS-funded programs such as the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), generally referred to as ''program partners.''

The scale of FSNE has grown considerably since the Food Stamp Nutrition Education Study, a descriptive study of FSNE operations in fiscal year (FY) 1997. The number of State food stamp agencies that applied and received approval for Federal reimbursement of nutrition education activities increased from 37 in FY 1997 to 50 in FY 2003. Federal funds approved for FSNE grew from $32 million in FY 1997 to over $192 million in FY 2003.

In addition to the continued growth of FSNE, several other factors have converged making it necessary for FNS to update and develop a more in-depth understanding of FSNE operations. These include: The use of new approaches to nutrition education; interest in the effectiveness of FSNE and the quality of services delivered; limited information on the diversity of FSNE activities given the flexibility of States to design a variety of programs and operate them in a decentralized manner; the lack of detailed information on spending and progress in meeting FSNE goals and objectives; and the high level of agency and public interest in improving diets and reducing the prevalence of overweight and obesity.

The purpose of this proposed information collection is two-fold: (1) To provide a comprehensive and systematic picture of nutrition education activities in the FSP in FY 2004; and (2) to identify patterns with relevance for future FSNE planning. The information collected is expected to be useful in increasing FNS' oversight capacity and improving accountability in the program, as well as identifying specific nutrition education issues or technical assistance needs that FNS can address in the future.

The Food Stamp Nutrition Education Systems Review will collect data in the following FSNE domains: organization and administration; program planning and decision-making; program implementation, including nutrition education messages, delivery and target audiences; monitoring and evaluation; and funding issues. The study will draw on three main sources of data: (1) Existing State FSNE plan documents for FY 2004, (2) Internet-based surveys of key staff from State food stamp agencies and FSNE implementing agencies, and (3) on-site interviews with staff from State food stamp agencies, implementing agencies, local projects, and program partners.

The sample frame for the study will include all State agencies expected to have approved FSNE Plans for FY 2004 (including the District of Columbia and the Virgin Islands). Contractor staff will abstract the necessary information from FY 2004 State FSNE plans and agency web sites to identify the universe of FSNE implementing agencies in these States. The Internet-based surveys will be a census of all 52 State food stamp agencies and approximately 93 implementing agencies. A systematic representative sample of implementing agencies will be selected for on-site data collection, after stratifying by type of implementing agency and FNS region. Types of implementing agencies include the traditional Cooperative Extension Services, nutrition networks, and other organizational structures. This is expected to result in a sample of about 34 implementing agencies in approximately 29 States. In consultation with each sampled implementing agency, 2 to 4 local project sites will be selected for site visits. Selection criteria will focus on capturing diversity in a variety of areas, including the target audience, geographical location, size and tenure of the program, and approaches to nutrition education.

The study and its data collection methodologies have been designed to minimize respondent burden wherever possible without compromising data quality. The use of a secure Internet site for survey administration will permit respondents to provide information at a time (or times) that is convenient to them. Respondents who do not have Internet access will be interviewed by telephone. In addition, all in-person interviews will be scheduled in advance in an effort to accommodate respondents' schedules. All survey questions will be kept as simple and respondent-friendly as possible. Maximum use will also be made of existing data from public sources.

Responses to all questions will be voluntary. The contractor will take the following steps to treat the data provided in a confidential manner: (1) Potentially sensitive survey data and all information collected in on-site interviews will be combined with other data and reported only in aggregate or statistical form, and (2) no data will be released in a form that identifies individual respondents by name. Respondents will be notified of these confidentiality measures by letter and in the Internet surveys.

Affected Public: Staff from State food stamp agencies, and other State agencies, implementing agencies, and local projects collaborating with the FSP to provide FSNE.

Estimated Number of Respondents: Internet-based surveys: 52 State FSP administrators, 52 State FSP budget directors, 93 implementing agency directors, and 93 implementing agency budget officers.

On-site interviews: 29 State FSP administrators; 29 State FSP budget directors; 34 implementing agency directors; 34 implementing agency budget officers; 11 implementing agency senior administrators; 34 program partner directors (*e.g.*, WIC directors); 112 local project directors; 112 local project budget officers; 336 local project instructors; and 112 local partner providers.

Number of Responses per Respondent: 1.

Total Number of Annual Responses: 1,133.

Estimated Time Per Response: All burden estimates include time to prepare for and complete the survey or interview. Internet-based survey: State FSP administrators, 1 hour; State FSP budget directors, 0.5 hour; implementing agency directors, 2 hours; and implementing agency budget officers, 2 hours.

On-site interviews: State FSP administrators, 2 hours; State FSP budget directors, 2 hours; implementing agency directors, 4 hours; implementing agency budget officers, 3 hours; implementing agency senior administrators, 1 hour; program partner directors, 1 hour; local project directors, 2 hours; local project budget officers, 1 hour; local project instructors, 1 hour; and local partner providers, 1 hour.

Estimated Total Annual Burden: Total of 1,633 hours, including: State FSP administrators, 110 hours; State FSP budget directors, 84 hours; implementing agency directors, 322 hours; implementing agency budget officers, 288 hours; implementing agency senior administrators, 11 hours; program partner directors, 34 hours; local project directors, 224 hours; local project budget officers, 112 hours; local project instructors, 336 hours; and local partner providers, 112 hours.

Dated: April 21, 2004.

Roberto Salazar,

Administrator.

[FR Doc. 04–9553 Filed 4–26–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, May 17, 2004. The meeting will include routine business and a discussion of larger scale projects.

DATES: The meeting will be held May 17, 2004, from 4:30 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 20, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–9492 Filed 4–26–04; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

[USARC 04–014]

Notice of Meeting

April 19, 2004.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 72nd Meeting in Fairbanks, AK, on June 2–4, 2004. The Business Session open to the public will convene at 9 a.m. Wednesday, June 2, the Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 71st Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Thursday, June 3, 2003. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 04–9635 Filed 4–23–04; 1:21 pm]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 22, 2004, the Department of Commerce (the Department) published in the **Federal Register** (69 FR 3117) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from the People's Republic of China. The period of review (POR) is December 1, 2002, to November 30, 2003. This review is now being rescinded for Anhui Honghui Foodstuff (Group) Co., Ltd. (''Anhui Honghui''); Cheng Du Wai Yuan Bee Products Co., Ltd. (''Cheng Du''); Eurasia Bee's Products Co., Ltd. (''Eurasia Bee''); Inner Mongolia Youth Trade Development Co., Ltd. (''Inner Mongolia Youth''); and Jiangsu Kanghong Natural Healthfoods Co., Ltd. (''Jiangsu Kanghong'') because the requesting parties withdrew their review requests.

DATES: *Effective Date:* April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–0405 or (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION

Scope of Review

The merchandise under review is honey from the PRC. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Background

On December 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order covering honey from the People's Republic of China (PRC). See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China, 66 FR 63670 (December 10, 2001). On December 2, 2003, the Department published a Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, 68 FR 67401. On December 29, 2003, Anhui Honghui, Eurasia Bee, and Jiangsu Kanghong requested that the Department conduct an administrative review of each respective company's entries during the POR. On December 31, 2003, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of entries of subject merchandise made during the POR by 20 Chinese producers/exporters, which included Anhui Honghui; Anhui Native Produce Import & Export Corp. (''Anhui Native''); Cheng Du; Eurasia Bee; Foodworld International Club, Ltd. (''Foodworld''); Henan Native Produce and Animal By-Products Import & Export Company (''Henan''); High Hope International Group Jiangsu Foodstuffs Import & Export Corp. (''High Hope''); Inner Mongolia Youth; Jiangsu Kanghong; Jinan Products Industry Co., Ltd. (''Jinan''); and Native Produce and Animal Import & Export Co. (''Native Produce''). On January 14, 2004, the petitioners filed a letter withdrawing their request for review of Henan, High Hope, Jinan, and Native Produce. On January 22, 2003, the Department initiated the review for the remaining 16 companies. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 68 FR 3009. On February 13, 2004, and February 18, 2004, petitioners withdrew their request for review of Foodworld and Anhui Native, respectively. On March 10, 2004, the Department rescinded the review for Foodworld and Anhui Native. See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review, 69 FR 11383.

Separately, the Department also received timely requests in accordance with 19 CFR 351.214(c) from Anhui Honghui, Cheng Du, Eurasia Bee, Inner Mongolia Youth and Jiangsu Kanghong for new shipper reviews of the antidumping duty order on honey from the PRC. On February 6, 2004, we published a notice initiating new shipper reviews for each of these companies' sales during the same POR as this administrative review. See Honey from the People's Republic of China: Initiation of New Shipper Duty Administrative Reviews, 69 FR 5835. On February 24, 2004, Cheng Du stated that it did not have any direct or indirect export sales of honey to the United States during the POR that are not already covered by the separate new shipper review covering the period December 1, 2002, through May 31, 2003, and therefore requested that the Department rescind this proceeding for Cheng Du. On February 25, 2004, Inner Mongolia Youth stated that the only sale it made during the POR was currently being reviewed by the separate new shipper review and requested that the Department rescind this administrative review for Inner Mongolia Youth. On March 5, 2004, Anhui Honghui, Eurasia Bee and Jiangsu Kanghong withdrew their requests for the administrative review covering the POR because all of their entries of subject merchandise during the POR are already subject to the new shipper review initiated by the Department. On March 12, 2004, petitioners also withdrew their request for an administrative review of entries

made by Anhui Honghui, Cheng Du, Eurasia Bee, Inner Mongolia Youth, and Jiangsu Kanghong.

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Anhui Honghui, Eurasia Bee, and Jiangsu Kanghong withdrew their review requests within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1). The petitioners also withdrew their review request for these three companies within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1). Thus, since all requesting parties withdrew their requests for review, we are rescinding this review of the antidumping duty order on honey from the PRC covering the period December 1, 2002, through November 30, 2003, with respect to Anhui Honghui, Eurasia Bee, and Jiangsu Kanghong. Also, since petitioners were the only party to request an administrative review of Cheng Du and Inner Mongolia Youth, and petitioners withdrew their review request for these two companies, we are rescinding this review of the antidumping duty order on honey from the PRC covering the period December 1, 2002, through November 30, 2003, with respect to Cheng Du and Inner Mongolia Youth.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: April 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–9476 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products From India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India until June 20, 2004. This review covers one respondent, Essar Steel Limited. The period of review is May 3, 2001 through November 30, 2002.

DATES: *Effective Date:* April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin Williams or Howard Smith, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 2003, the Department initiated an administrative review of certain hot-rolled carbon steel flat products (HRS) from India, covering the period May 3, 2001 through November 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003). On December 23, 2003, the Department published in the **Federal Register** the preliminary results of the administrative review. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 74209 (December 23, 2003). The final results of review are currently due no later than April 21, 2004.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. *See* the memorandum from Thomas F. Futtner, Acting Office Director Group II, Office 4, to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. The Department is therefore extending the time limit for completion of the final results of review by 60 days. We intend to issue the final results of review no later than June 20, 2004.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 20, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 04–9479 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818)

Amended Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 10, 2004, the Department of Commerce (the Department) published in the **Federal Register** the final results of the sixth administrative review of the antidumping duty order on certain pasta from Italy and determination not to revoke in part, for the period July 1, 2001, through June 30, 2002 (*Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004) (*Final Results*)). On February 17, 2004, we received timely–filed ministerial error allegations from petitioners[1] and Pastificio Lucio

[1] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, A. Zerega's & Sons, Inc. and American Italian Pasta Company.

Garofalo, S.p.A. (Garofalo) pertaining to Garofalo and a clerical error allegation from petitioners pertaining to Rummo S.p.A. (Rummo). On February 20, 2004, we received Garofalo's rebuttal brief pertaining to petitioners' ministerial error allegations. Based on our analysis of this information, the Department has revised the margin rate for Garofalo.

EFFECTIVE DATE: April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Carrie Farley (202) 482–0395 Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of Review

Imports covered by this review are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton, Senior Analyst, Office of AD/CVD Enforcement V, to Richard Moreland, Deputy Assist Secretary, ''Scope Ruling Concerning Pasta from Italy,'' dated August 25, 1997, which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce Department Building.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. See Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla Alimentare, S.p.A. (Barilla), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(b). *See Anti–circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, Office of AD/CVD Enforcement VI, to Richard Moreland, Deputy Assistant Secretary, ''Final Scope Ruling,'' dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Amended Final Results

With respect to Garofalo, petitioners alleged that the Department made three ministerial errors in calculating Garofalo's final *ad valorem* margin. Petitioners alleged that the Department: (1) did not correctly implement its decision to collapse two of Garofalo's reported wheat codes; (2) did not correctly calculate revised G&A expense and interest expense; and (3) incorrectly calculated imputed credit.

We agree with petitioners that their first allegation is ministerial in nature and that we did not implement correctly our decision on collapsing the two wheat codes. Therefore, we corrected Garofalo's final margin program accordingly. However, the Department disagrees with petitioners' second and third allegations on the grounds that the alleged errors are not ministerial in nature. Therefore, we are not making any adjustments to the calculations with respect to Garofalo's G&A expense and interest expense, and imputed credit. *See* the April *19*, 2004, memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group II (Amended Final Memo).

Garofalo alleged that the Department failed to calculate dumping margins for U.S. sales with no home market sales matches. We agree with Garofalo that its allegation is ministerial in nature, and we corrected Garofalo's final margin accordingly. *See* Amended Final Memo.

With respect to Rummo, petitioners alleged that the Department made a clerical error in its narrative characterization of Rummo's margin rate as *de minimis*. We agree with petitioners that this characterization was incorrect, and have ensured that the correct margin rate of 0.94 percent is applied in liquidation and cash deposit instructions.

As a result of our corrections, for the period July 1, 2001, through June 30, 2002, Garofalo's antidumping duty margin increased from 2.55 percent to 2.57 percent *ad valorem*.

The Department will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties, as indicated above, on all appropriate entries. The Department will issue liquidation instructions directly to the CBP. The amended cash deposit requirement is effective for all shipments of subject merchandise from Garofalo entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

These amended final results are issued and published in accordance with section 751(h) of the Act and 19 CFR 351.224.

Dated: April 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–9550 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Welton, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–0165.

Background

On June 2, 2003, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan for the period June 1, 2002, through May 31, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 68 FR 32727 (June 2, 2003). On June 30, 2003, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. (''petitioners'') requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen''), Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), and Tru-Flow Industrial Co., Ltd. (''Tru-Flow''), and PFP Taiwan Co., Ltd., (''PFP'') for the period June 1, 2002, through May 31, 2003. On June 30, 2003, Ta Chen requested an administrative review of its sales to the United States during the period of review (''POR''). On July 29, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2002, through May 31, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part,* 68 FR 44524 (July 29, 2003). On March 3, 2004, the Department extended the deadline for the preliminary results in this administrative review by 90 days until May 30, 2004. *See Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review* 69 FR 9997, (March 3, 2004).

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. On March 3, 2004, we extended the due date of the preliminary results in this administrative review by 90 days until 335 days after the last day of the month in which occurs the anniversary of the date of publication of the order. *See Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review* 69 FR 9997, dated March 3, 2004. Completion of the preliminary results within the 335 day period is impracticable because this review involves complex affiliation issues which have continued to emerge as the review progressed, requiring additional time for analysis.

Because it is not practicable to complete this review within the time specified in our previous extension notice, we are extending the due date for the preliminary results for an additional 30 days until June 29, 2004. Thus, the preliminary results are now being fully extended until 365 days after the last day of the month in which occurs the anniversary of the date of publication of the order, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: April 16, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–9478 Filed 4–26–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment 23 from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 27, 2004.

PRELIMINARY DETERMINATION:

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of Carbazole Violet Pigment 23 (CVP - 23) from India. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Addilyn Chams–Eddine, Office of AD/CVD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone

(202) 482–3964 and (202) 482–0648 respectively.

SUPPLEMENTARY INFORMATION:

Case History

The petition in this investigation was filed on November 21, 2003, by Nation Ford Chemical Company and Sun Chemical Company (petitioners). This investigation was initiated on December 11, 2003. *See Notice of Initiation of Countervailing Duty Investigation: Carbazole Violet Pigment 23 (CVP - 23) from India*, 68 FR 70778 (December 19, 2003). On December 19, 2003, we issued a questionnaire to the Government of India (GOI) and requested that the GOI forward the relevant sections of the questionnaire to Indian producers/exporters of CVP–23.

On January 16, 2004, petitioners timely requested a 65–day postponement of the preliminary determination for this investigation. On January 22, 2004, the Department extended the deadline for the preliminary determination to April 19, 2004 in accordance with section 703(c)(1)(A) of the Tariff Act of 1930 (the Act). *See Postponement of Preliminary Countervailing Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 4291 (January 29, 2004).

On February 10, 2004, the GOI submitted its questionnaire response. In its questionnaire response, the GOI identified four Indian companies that produced and/or exported CVP–23 to the United States during the period of investigation (POI), and indicated which programs had been used by these companies. These four companies were Alpanil Industries, Ltd. (Alpanil), AMI Pigments Pvt. Ltd. (AMI), Meghmani Organics Ltd. (Meghmani), and Pidilite Industries Ltd. (Pidilite). In addition, two of the four companies identified by the GOI, Alpanil and Pidilite, also submitted questionnaire responses to the Department on February 10, 2004.

The GOI provided additional information on February 18, 2004, in response to the Department's request, indicating the non–use of two additional programs identified by the GOI in its February 10, 2004 response: the Duty Free Replenishment Certificate (DFRC) and the Advance License Scheme. In addition, the GOI indicated that AMI, one of the producer/exporters of CVP–23 during the POI, that is not participating in this investigation and has not responded to any of the Department's questionnaires, utilized the Duty Entitlement Passbook Scheme (DEPS). The GOI provided the Department the amount of DEPS credits utilized by AMI during the POI. Finally, the GOI also noted that Alpanil's affiliated company, Meghmani Organics Ltd. (Meghmani), exported a small amount of subject merchandise to the United States during the POI. Other than the information provided through the GOI and Alpanil, Meghmani has not responded to the Department's questionnaire.

On February 25, 2004, petitioners submitted a timely allegation, in accordance with section 351.301(d)(4)(i)(A) of the Department's regulations, of additional countervailable subsidies and requested that the Department initiate an investigation for sales tax incentive programs in the states of Gujarat and Maharashtra. On March 9, 2004, the Department issued supplemental questionnaires to the GOI, Alpanil, and Pidilite. On March 12, 2004, the Department initiated an investigation on these two new alleged subsidy programs and issued questionnaires to the GOI and the Indian producers/exporters of CVP–23. *See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, through Barbara E. Tillman, Office of AD/CVD Enforcement VII; Countervailing Duty Investigation of Carbazole Violet Pigment 23 (CVP–23) from India*, dated March 12, 2004.

The GOI, Alpanil, and Pidilite submitted their responses to our supplemental questionnaires on March 24, 2004. We received the GOI's questionnaire response for the two new subsidy programs on March 26, 2004. Alpanil and Pidilite filed their respective responses to this questionnaire on March 29, 2004. On April 2, 2004, the Department contacted the GOI and requested further clarification concerning the identification of Indian producers/exporters that used the sales tax incentive program in the state of Maharashtra. *See Memorandum to the File from Sean Carey, Trade Analyst, Office VII; Clarification on Usage of the State of Maharashtra's Sales Tax Incentive Program by Indian Producers/Exporters of Carbazole Violet Pigment 23 (CVP–23)*, dated April 6, 2004. This information was submitted to the Department on April 8, 2004.

On April 5, 2004, Alpanil submitted additional information that was requested by the Department. On April 6, 2004, the Department requested additional information from Alpanil concerning Meghmani's overall use of the CVD programs under investigation. As of the date of this preliminary determination, we have not received a response.

Scope of the Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2–b:3',2'-m]triphenodioxazine, 8,18–dichloro–5, 15 5,15–diethy–5,15–dihydro-*, and molecular formula of $C_{34}H_{22};C_{12}N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (e.g., dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury, to a U.S. industry. On January 13, 2004, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and India of subject merchandise. *See Carbazole Violet Pigment 23 From China and India*, 69 FR 20021 (January 13, 2004).

Alignment With Final Antidumping Duty Determination

On January 16, 2004, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of CVP–23 from India.

[1] The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. See December 4, 2003, amendment to petition (supplemental petition) at 8.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2002, through March 31, 2003, which corresponds to the most recently completed fiscal year for the respondent companies.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rate

In accordance with section 351.505(a)(3)(ii) of the Department's regulations, for those programs requiring the application of a benchmark interest rate, and where company–specific interest rates on comparable commercial loans are not available, we may use a national average interest rate for comparable commercial loans. With respect to the rupee–denominated, short–term benchmark used in calculating the benefit for post–shipment export financing, we used a national average interest rate since Alpanil, the only producer/exporter of CVP–23 which reported to have used this program, stated that it did not have any comparable short–term commercial loans. We calculated a national average short–term interest rate using information from the International Monetary Fund's publication *International Financial Statistics* (March 2004), which shows the average short- and medium–term, rupee–denominated financing from private creditors for the fiscal quarters which correspond to our POI.

Cross–Ownership and Attribution of Subsidies

Because Alpanil reported that it is affiliated with Meghmani, an exporter of subject merchandise and producer of non–subject merchandise, by virtue of common owners, we must examine whether cross–ownership exists between the two companies within the meaning of section 351.525(b)(6) of our regulations. Section 351.525(b)(6)(vi) of the regulations defines cross–ownership as existing ''where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.''

The record indicates that Alpanil and Meghmani have three common owners that account for 55 percent and 50 percent, respectively, of the ownership interest in each company. *See* Exhibit CVD–1 of Alpanil's February 10, 2004 questionnaire response. Although we requested that the GOI and Alpanil obtain or provide a complete questionnaire response for Meghmani in order to further evaluate the issue of cross–ownership and the role these individual owners play in administering and directing Alpanil and Meghmani, this information was not provided. *See* Alpanil's March 24, 2004 supplemental questionnaire response at 2 and the GOI's March 24, 2004 supplemental questionnaire response at 1.

Since we have received incomplete information from the GOI, Alpanil, and Meghmani with regard to the issue of cross–ownership, we have preliminarily resorted to facts otherwise available pursuant to section 776(a) of the Act. Therefore, we preliminarily determine that cross–ownership exists between Alpanil and Meghmani since the facts available indicate that three mutual owners of both companies have the capacity to control, influence, and direct the operations of Alpanil and Meghmani through their combined majority voting ownership interest. Accordingly, we have attributed Meghmani's subsidies to the products sold by Alpanil during the POI in accordance with section 351.525(b)(6)(v) of the Department's regulations, in determining a combined Alpanil/Meghmani *ad valorem* rate. In instances where Meghmani acted as Alpanil's trading company during the POI, we have preliminarily calculated Alpanil/Meghmani's subsidy rate for each export subsidy program by cumulating Meghmani's export subsidies with Alpanil's export subsidies in accordance with section 351.525(c) of the Department's regulations. *See* ''Duty Entitlement Passbook Scheme'' and ''Income Tax Exemption Scheme'' sections of this notice, below.

I. Programs Preliminarily Determined to be Countervailable

A. GOI Programs

1. *Pre–Shipment Export Financing*

The Reserve Bank of India (RBI), through commercial banks, provides short–term pre–shipment export financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre–shipment loans for working capital purposes. Exporters may also establish pre–shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks based upon a company's creditworthiness and past export performance, and may be denominated either in Indian rupees or in foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI.

The Department has previously determined that this export financing is countervailable to the extent that the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. *See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India (PET Film from India),* 67 FR 34905 (May 16, 2002). Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. *See* the ''Pre–Shipment and Post–Shipment Export Financing'' section of the *PET Film from India Issues and Decision Memorandum* on file in the Department's Central Records Unit (CRU) and available online at http://www.ia.ita.doc.gov. The Department further determined that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. In addition, the Department determined this program, which is contingent upon exports, to be specific within the meaning of section 771(5A)(B) of the Act. No new information or evidence of changed circumstances have been presented in this investigation to warrant reconsideration of this finding.

The GOI reported that only Alpanil used this program during the POI. Pidilite reported its non–use of this program in its February 10, 2004 questionnaire response. Alpanil reported that it used the pre–shipment export financing program during the POI by way of a credit line established through a commercial bank. According to Alpanil, this pre–shipment financing operates on a running account where interest is calculated on the daily outstanding amount and paid quarterly. Alpanil stated that in cases where the pre–shipment financing exceeded 180 days, there is no actual repayment schedule; however, the amount outstanding is recoverable on demand at a commercial rate of interest applied to the outstanding balances. *See* Alpanil's February 10, 2004 questionnaire response at pages 29–31.

To calculate the benefit conferred by the pre–shipment export financing, we compared the actual interest paid on the credit line with the amount of interest that would have been paid at the benchmark interest rate for short- to medium–term loans. *See* ''Benchmarks for Loans and Discount Rate'' section, above. Since the benchmark rate

exceeded the actual interest rate paid quarterly on Alpanil's credit line, a benefit is conferred. We then divided the total amount of the benefit by Alpanil's total direct exports during the POI. Accordingly, we preliminarily determine the net countervailable subsidy under the pre–shipment export financing program to be

0.17 percent *ad valorem* for Alpanil/Meghmani (*see* ''Cross–Ownership and Attribution of Subsidies'' section above), and zero for AMI and Pidilite.

2. *Duty Entitlement Passbook Scheme (DEPS)*

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post–export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION. Therefore, CVP–23 exporters were eligible to earn credits equal to 15 percent of the FOB value of their export shipments during the fiscal year ending March 31, 2003.

The Department has previously determined that the DEPS is countervailable. In *PET Film From India*, the Department determined that under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because (1) the GOI provides credits for the future payment of import duties; and (2), the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Therefore, under section 351.519(a)(4) of the Department's regulations and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit. Finally, this program can only be used by exporters and, therefore, it is specific under section 771(5A)(B) of the Act. *See* the ''DEPS'' section of the PET Film from India Issues and Decision Memorandum on file in the CRU and available online at *http://www.ia.ita.doc.gov*. No new information or evidence of changed circumstances have been presented in this investigation to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

Under section 351.524(c) of the Department's regulations, this program provides a recurring benefit because DEPS credits provide exemption from import duties. Benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. *See* comment 4, ''Timing and Calculation of DEPS Benefits,'' *Final Affirmative Countervailing Duty Determination: Certain Cut–to-Length Carbon–Quality Steel Plate From India*, 64 FR 73131, 73140, (December 29, 1999).

The GOI reported that Alpanil, AMI, and Pidilite used this program during the POI. Alpanil indicated in its response that Meghmani transferred its DEPS credits to Alpanil during the POI. *See* Alpanil's March 24, 2004 supplemental questionnaire response at 3. We calculated the DEPS program rate using the value of the post–export credits that the respondents earned for their export shipments of subject merchandise to the United States during the POI by multiplying the FOB value of each export shipment by the relevant percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by each respondent's total respective exports of subject merchandise to the United States during the POI.

On this basis, we preliminarily determine Pidilite's net countervailable subsidy from the DEPS program to be 14.93 percent *ad valorem*. For Alpanil/Meghmani, we preliminarily determine the net countervailable subsidy from this program to be 14.93 percent *ad valorem* which is inclusive of DEPS credits earned by Meghmani that were transferred to Alpanil during the POI. *See* ''Cross–Ownership and Attribution of Subsidies'' section of this notice, noted above.

For AMI, we have information from the GOI's February 10, 2004, questionnaire response showing that AMI utilized this program during the POI. Since AMI has not participated in this investigation and necessary information is not available on the record, we have applied facts available in accordance with section 776(a). In applying facts available, we have made an adverse inference pursuant to section 776(b), since AMI has not cooperated to the best of its ability to respond to the Department's request for information by virtue of its complete lack of participation in this investigation.

Consistent with our practice, we have used, as adverse facts available, the highest company–specific DEPS program rate calculated in an Indian proceeding. The rate we have calculated for the purposes of this preliminary determination for Alpanil/Meghmani, 14.93 percent *ad valorem*, is the highest company–specific DEPS program rate calculated. This rate is higher than the company–specific DEPS program rate calculated in any other completed Indian proceeding. *See e.g., PET Film from India Issues and Decision Memorandum* on file in the CRU and available online at *http://www.ia.ita.doc.gov*. Accordingly, we used this rate to preliminarily determine an *ad valorem* rate of 14.93 percent for AMI during the POI. We believe this information is reliable and relevant because this company–specific DEPS rate was calculated using information in the record of this investigation (for a company in the same industry during the same period).

3. *Income Tax Exemption Scheme (Section 80 HHC)*

In *Certain Iron–Metal Castings From India: Final Results of Countervailing Duty Administrative Review (Iron–Metal Castings from India)*, 65 FR 31515 (May 18, 2000), the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. No new information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, we continue to find this program countervailable because it is contingent upon export performance and, therefore, is specific in accordance with section 771(5A)(B) of the Act. Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of tax revenue not collected. Finally, a benefit is conferred in the amount of tax savings in accordance with section 771(5)(E) of the Act.

The GOI reported that only Alpanil and Pidilite used this program during the POI. However, according to Alpanil, Meghmani also received 80 HHC tax benefits during the POI. See Alpanil's March 24, 2004 supplemental questionnaire response. To calculate the benefit each responding company received under this program, we subtracted the total amount of income tax the company actually paid during

the POI from the amount of tax the company otherwise would have paid had it not claimed a deduction under section 80 HHC. Since the Department has previously found section 80 HHC to be an ''untied'' export subsidy program where the benefits provided are attributable to all products exported by the company, we then divided this difference by the FOB value of the company's total exports during the POI. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370 (June 14, 1996). For Pidilite, we preliminarily determine the net countervailable subsidy from this program to be 3.00 percent *ad valorem*.

According to Alpanil, Alpanil and Meghmani received tax benefits under this program during the POI. *See* Alpanil's March 24, 2004 supplemental questionnaire response at 3. Meghmani did not file a questionnaire response with the necessary information to cumulate Meghmani's export subsidies with Alpanil's under this program. Similarly, Meghmani's affiliate, Alpanil, did not provide such information. Therefore, we have resorted to facts available pursuant to section 776(a) of the Act. Furthermore, by virtue of their complete failure to respond to questions on Meghmani's utilization of this program, Meghmani and Alpanil did not act to the best of their abilities in providing the information we requested concerning Meghmani's use of the programs under investigation (*see* ''Case History'' section, above). Therefore, we have resorted to adverse facts available in accordance with section 776(b) of the Act. As noted above in the ''Cross–Ownership and Attribution of Subsidies'' section of this notice, we are cumulating Meghmani's export subsidies with Alpanil's export subsidies in accordance with section 351.525(c) of the Department's regulations.

The record indicates that Alpanil received 80 HHC deductions for its direct export sales, as well as for its indirect export sales to Meghmani as a ''supporting manufacturer.'' *See* exhibit CVD–4 of Alpanil's February 10, 2004 questionnaire response. According to Alpanil, ''where a supporting manufacturer supplies to an Export or Trading House, the deduction{s} he receives under section 80 HHC are to the extent of profits derived from the sale of goods to the Export or Trading House. Similarly, the deductions that an Export or Trading House is entitled to on profits from the export of goods are reduced by the profits attributable to the sales made by the supporting manufacturer to the Export or Trading House.'' *See* Alpanil's supplemental questionnaire response at pages 8 through 9. We have complete information that can be used in the calculation of Alpanil's portion of the 80 HHC benefits that can be attributed to the *ad valorem* rate for Alpanil/Meghmani during the POI. *See* ''Cross–Ownership and Attribution of Subsidies'' section, above.

In the case of Meghmani, we do not have the necessary sales and tax information needed to calculate Meghmani's portion of the 80 HHC's benefits in question. Section 776(b) of the Act indicates that the Department may use publicly available information from other proceedings for purposes of determining the adverse facts available rate for a program in which there is no information on record. Therefore, as adverse facts available, we have calculated the benefit to Meghmani by first using the highest company–specific program rate of 14.90 percent ad valorem from *Iron–Metal Castings from India*, 65 FR 31515 (May 18, 2000).

Section 776(c) of the Act provides that the Department shall, ''to the extent practicable,'' corroborate secondary information using independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the URAA (SAA) further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870; *also*, section 351.308(d) of the Department's regulations. However, unlike other types of information, such as publicly available data on national inflation rates or national average interest rates, there are typically no independent sources for data on company–specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations.

While we find the information from *Iron–Metal Castings from India* to be reliable as the 80 HHC program has not changed since that determination made, it may not be completely relevant to the extent that differences exist in the profit margins of the two types of products (steel and chemicals). However, the fact that corroboration may not be practicable in a given case does not prevent the Department from applying an adverse inference as appropriate, and does not prevent the Department from using secondary information. *See* section 351.308(d) of the Department's regulations. Accordingly, we find it reasonable to use this highest company–specific program rate from *Iron–Metal Castings from India* in order to draw the appropriate adverse inference in this case, and to adequately account for Meghmani's failure to respond to any of the Department's questionnaires.

Finally, using the only export information available on record for both companies, we weight–averaged Alpanil's calculated rate and Meghmani's adverse facts available rate by Alpanil's direct exports of subject merchandise to the United States and Alpanil's indirect exports of subject merchandise to the United States through Meghmani. By using a weighted–average program rate for Meghmani, we find that we can capture any potential 80 HHC benefits from Meghmani's direct exports and indirect exports from producers other than Alpanil. We preliminarily determine the net countervailable subsidy for Alpanil/Meghmani under this program to be 2.81 percent *ad valorem*.

B. State of Gujarat (SOG) Program:

Sales Tax Incentive Scheme

Under the 1995 Industrial Policy of Gujarat, companies located in specific areas of Gujarat are exempted from payment of sales tax on the purchase of raw materials, consumable stores, packing materials, and processing materials. *See* Exhibit 2 of the GOI's March 26, 2004 questionnaire response. Other available benefits include exemption or deferment from sales tax and turnover tax on the sale of intermediate products, by–products, and scrap. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOG in equal installments over six years. *Id.* at pages 9 and10.

According to Section 87 of Gujarat Sales Tax Act of 1969, sales made outside of Gujarat are already exempt from this sales tax. *See* Alpanil's March 29, 2004 Additional Allegations response at 2. Accordingly, the sales tax exemption covered by the SOG's sale tax incentive scheme only applies to sales within the state of Gujarat that would normally be assessed this sales tax.

The Department preliminarily determines that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located within designated geographical areas. We also preliminarily find that the SOG provided a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue, and that the Indian companies benefitted under section 771(5)(E) of the Act, in the amount of sales tax exempted on purchases noted above.

Although Alpanil reported receiving exemptions under the SOG's sales tax incentive scheme, and Pidilite claimed that it did not use this program during the POI, we do not have definitive information from the GOI concerning whether AMI and Meghmani used this program during the POI. On April 2, 2004, we sought further clarification from the GOI regarding AMI's and Meghmani's use of this program. On April 8, 2004, the GOI subsequently filed a response indicating that (1) Alpanil would provide the requisite information on the use of this program by Meghmani; and, (2) the GOI had no details concerning AMI's use of the program. As noted above in the ''Case History'' section, we also sent a letter to Alpanil on April 6, 2004 seeking information on Meghmani's use of this and the other programs under investigation for the POI. As of the date of this preliminary determination, we have not received a response.

Information from the GOI indicates that AMI and Meghmani are both located in the state of Gujarat. *See* GOI's February 10, 2004 questionnaire response at pages 2–3. Because AMI and Meghmani did not respond to the Department's questionnaires, and the GOI did not indicate in its response whether AMI or Meghmani utilized this program during the POI, the record does not contain any information demonstrating that AMI and Meghmani do not participate in the SOG's sales tax incentive scheme. Therefore, we must resort to facts available under section 776(a) of the Act. Furthermore, AMI and Meghmani failed to cooperate to the best of their abilities by failing to respond to the Department's questionnaires. As such, pursuant to section 776(b) of the Act, we have made the adverse inference that both companies benefitted from this program during the POI. *See e.g., Certain Cold–Rolled Carbon Steel Flat Products from Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002).

Because a company–specific rate for this program has never been previously determined by the Department, we relied on the information provided in Alpanil's response to determine the adverse facts available rate to apply to Alpanil/Meghmani and to AMI. Accordingly, we divided Alpanil's reported sales tax exemption for the POI, by the relevant in–state sales that would normally be assessed this tax. Based on this calculation, we preliminarily determine the net countervailable subsidy for Alpanil/Meghmani to be 4.38 percent *ad valorem*, and 4.38 percent *ad valorem* for AMI. Furthermore, the rate is based on actual information reported by a respondent in this investigation, and is thereby reliable and relevant to this investigation.

II. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of CVP–23 did not apply for or receive benefits under the programs listed below. For purposes of this preliminary determination, we have relied on the GOI's response to preliminarily determine non–use of the programs listed below for AMI and Meghmani. During the course of verification, if we are unable to establish through the information provided by the GOI that each of these non–responding companies did not utilize each of these programs (or any of the programs listed above for which non–use by an individual company was reported), we may resort to adverse facts available in determining the program rate for the final determination for the relevant program and company in question.

A. GOI Programs

1. Export Promotion Capital Goods Scheme (EPCGS)
2. Export Processing Zones (EPZs) / Export Oriented Units (EOUs) Programs
3. Income Tax Exemption Scheme (Sections 10A and 10B)
4. Market Development Assistance
5. Special Imprest Licenses
6. Duty Free Replenishment Certificate
7. Advance License Scheme
8. CENVAT Refund for Exports

B. State Program

State of Maharastra (SOM) Program: Sales Tax Incentives

III. Program Preliminarily Determined To Be Terminated

GOI Program: Exemption of Export Credit from Interest Taxes

Indian commercial banks were required to pay a tax on all interest accrued from borrowers. The banks passed along this interest tax to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing to a commercial bank on export–related loans. The Department has previously found this tax exemption to be an export subsidy, and thus countervailable, because only interest accruing on loans and advances made to exporters in the form of export credit was exempt from interest tax. *See e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron–Metal Castings from India*, 61 FR 64676, 64686 (December 6, 1996).

The GOI reported that the tax on interest on any category of loan was eliminated prior to the POI. Specifically, the GOI submitted Section 4(3) of the Interest Tax Act which provides that ''no interest tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 2000.'' *See* Appendix 6 of the GOI's February 10, 2004 questionnaire response. In addition, the information reported by the responding companies indicates that they are no longer required to pay tax on any interest on any loans. Therefore, in accordance with section 351.526(d) of the Department's regulations, we preliminarily determine that this program has been terminated. If, however, we are unable to establish at verification that there are no residual benefits accruing to exporters of CVP–23 from India from this program, and that the GOI has not implemented a replacement program, we will not find, for purposes of the final determination that this program has been terminated in accordance with section 351.526(d) of the regulations.

IV. Program for Which Additional Information is Needed

Central Value Added Tax (CENVAT) Credits for Domestic Consumption

According to the GOI, the Modified Value Added Tax (MODVAT) was established in 1986 in order to do away with the cascading effect of domestic commodity taxes paid on inputs used in the manufacture of the final product. The MODVAT was renamed the Central Value Added Tax (CENVAT) in 2000. Under the CENVAT Scheme, according to the GOI questionnaire responses, every manufacturer of excisable goods is required to register under the Central Excise Act. CENVAT credits are earned on the taxes or duties paid on inputs and capital goods received for the manufacture of any dutiable final product, including the Excise Duty, Special Excise Duty (SED), Additional Duty of Excise (AED), and Countervailing Duty (CVD). According to the GOI, CENVAT credits can be used to offset CENVAT owed on any final product cleared for domestic consumption. On final products cleared for export, no CENVAT is required to be paid. The GOI reported that every Indian manufacturer of excisable goods is eligible to use this program. All companies can claim these credits. See GOI's February 10, 2004 questionnaire response at pages 63–64. During the POI, Alpanil and Pidilite claimed CENVAT credits.

Based on the information on the record of this investigation, we are unable to determine whether CENVAT credits for domestic consumption are provided to a specific enterprise or industry, or group thereof. Although it appears that all manufacturers can use this program, we are unable to assess whether CENVAT credits are limited, in fact, to a specific enterprise or industry, or group thereof, in accordance with section 751(5A)(D)(iii) of the Act. Neither can we determine whether the provision of CENVAT credit against countervailing duties paid provides a benefit to a specific enterprise or industry, or group thereof in accordance with section 751(5A)(D)(iii) of Act. Therefore, for purposes of this preliminary determination, additional information is needed before making a decision with respect to this program. We will seek additional information from the GOI prior to our verification and final determination.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for Alpanil/Meghmani, Pidilite and AMI. To calculate the ''all others'' rate, we weight–averaged the individual rates of Alpanil/Meghmani and Pidilite by each company's respective sales of subject merchandise made to the United States during the POI. We did not include AMI's rate in the calculation of the ''all others'' rate because its rate was based on facts available. These rates are summarized in the table below:

Producer/Exporter	Net subsidy rate
Alpanil Industries/ Meghmani Organics Ltd	22.29 % ad valorem
Pidilite Industries Corporation Ltd	17.93 % ad valorem
AMI Pigments Pvt. Ltd.	19.31 % ad valorem
All Others	20.09 % ad valorem

In accordance with section 703(d)(1)(B) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of the subject merchandise from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

In addition, unless otherwise notified, six copies of the business proprietary version and six copies of the non–proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case briefs, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non–proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative oral presentation at any hearing only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above. This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: April 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–9477 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042004C]

Fisheries of the Exclusive Economic Zone Off Alaska; Public Workshop

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

ACTION: Notice of workshop.

SUMMARY: NMFS will present a workshop on proposed catch-monitoring standards for shoreside processors and buyers that intend to take deliveries of crab species managed under the Fishery Management Plan for the Bering Sea and Aleutian Islands King and Tanner Crabs (Crab FMP).

DATES: Thursday, May 6, 2004, 10 a.m. - 4 p.m., Pacific local time (P.l.t.).

ADDRESSES: The workshop will be held at the Nordby Center, located in Fishermen's Terminal, 1711 W. Nickerson St., Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS and the State of Alaska Department of Fish and Game are developing proposed regulations to implement a quota-based program for the crab fisheries covered under the Crab FMP. One aspect of this process is the development of catch monitoring, weighing, and accounting standards for shoreside processors and other first-buyers of crab. NMFS is conducting a workshop on May 6, 2004, from 10 a.m. - 4 p.m., P.l.t., so that interested industry members may provide input to NMFS on the development and implementation of these standards.

This workshop is physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Alan Kinsolving (see **FOR FURTHER INFORMATION CONTACT**).

Dated: April 21, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–9542 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 041604C]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 31–1741; U.S. Fish and Wildlife Service File No. MA081663–0

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Receipt of an application for a permit from NMFS and FWS.

SUMMARY: Notice is hereby given that the Wildlife Conservation Society (WCS), 2300 Southern Blvd., Bronx, NY 10460 (Dr. Howard C. Rosenbaum, Principal Investigator) has applied in due form for a permit from NMFS and FWS to take parts from species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 27, 2004.

ADDRESSES: The application request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1–800–358–2104).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 31–1741/MA081663–0.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, Office of Protected Resources, NMFS, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226).

The WCS Conservation Genetics Program, a collaboration between WCS and the American Museum of Natural History, maintains one of the largest collections of marine mammal tissues and specimens in the world. WCS wishes to obtain specimens and materials from all species of cetaceans (Order Cetacea), pinnipeds (Order Pinnipedia) and sirenians (Order Sirenia), as well as sea otters and marine otters. In addition, WCS is applying for permission to keep, import and export tissues obtained from beached or stranded animals and biopsy tissues from free-ranging and captive marine mammals of all species. Such tissues would be obtained by co-investigators or other named individuals and institutions working under their own permits. WCS also wishes to obtain permission to import tissue samples of marine mammals of unknown species for the purpose of forensic analysis and use in scientific studies. Export of specimens or tissues, irrespective of their source, would be made on temporary loan basis only to bona fide institutions for the sole purpose of exhibit or scientific research. A permit is requested for a period of five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 21, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: April 21, 2004.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 04–9453 Filed 4–26–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 21, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.cbp.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryover, the recrediting of unused carryforward, and the folklore adjustment.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59926, published on October 20, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 21, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on April 27, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	354,003 dozen.
314	7,734,983 square meters.
331pt./631pt. [2]	1,013,851 dozen pairs.
333/633	34,749 dozen.
334/634	1,518,283 dozen.
335	500,949 dozen.
336/636	775,892 dozen.
338/339	2,912,119 dozen.
340/640	2,419,416 dozen.
341/641	3,982,500 dozen of which not more than 2,655,000 dozen shall be in Category 341 and not more than 2,655,000 dozen shall be in Category 641.
342/642	1,429,570 dozen.
345/845	412,282 dozen.
347/348	2,459,199 dozen.
351/651	752,815 dozen.
352/652	2,885,113 dozen.
359–C/659–C [3]	2,161,834 kilograms.
360	1,637,032 numbers.
363	26,706,839 numbers.
369–S [4]	1,300,846 kilograms.
434	9,405 dozen.
435	20,153 dozen.
440	9,997 dozen.
611	4,381,598 square meters.
635	934,536 dozen.
638/639	1,977,648 dozen.
644	1,174,801 numbers.
645/646	285,683 dozen.
647/648	2,213,516 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–9491 Filed 4–26–04; 8:45 a.m.

BILLING CODE 3510–DR–S

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 comments received by May 27, 2004.

Title and OMB Number: Defense Reutilization & Marketing Service Customer Comment Card; OMB Number 0704–0394.

Type of Request: Reinstatement.

Number of Respondents: 400.

Responses Per Respondent: 1.

Annual Responses: 400.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 100.

Needs and Uses: The information collection requirement is necessary to obtain customer rating and comments on the service of a Defense Reutilization and Marketing store. Respondents are customers who obtain, or visit a store to obtain, surplus or excess property. The customer comment card is a means for customers to rate and comment on DRMS Facilities, Receipt/Store/Issue services, Usable property sales, and scrap sales. The completed card is an agent for service improvement and determining whether there is a systematic problem.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: April 20, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–9475 Filed 4–26–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 28, 2004.

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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 21, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Carl D. Perkins Vocational and Technical Education Act of 1998—State Plan Revisions Guidance.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 2,430.

Abstract: This collection solicits from States revisions to their State plans under the Carl D. Perkins Vocational and Technical Education Act and proposed performance levels for FY 2004.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2532. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center South, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6623. 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 Sheila Carey at (202) 245–6432. 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. 04–9551 Filed 4–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 21, 2004, the Department of Education published a correction notice in the **Federal Register** (Page 21502, Column 1) for the information collection, ''The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS, IPP, UISFUL, BIE, CIBE, AORC, Language Resource Centers (LRC), International Studies and Research (IRS), Fulbright-Hays Faculty Research Abroad (FRA), Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA), Fulbright-Hays Seminars Abroad (SA), Fulbright-Hays Group Projects Abroad (GPA), and Technology Innovation and Cooperation for Foreign Information Access (TICFIA) Programs''. The abstract is hereby corrected to read: ''International Education Programs Service (IEPS) requests the approval of EELIAS. This information collection will assist IEPS in meeting program planning and evaluation requirements. Program Officers require performance information to justify continuation funding, and grantees use the information for self evaluations and to request continued funding from the Department of Education.''

Dated: April 21, 2004.

Angela C. Arrington,

Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–9552 Filed 4–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Research Center for Career and Technical Education and National Dissemination Center for Career and Technical Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed extension of project period and waivers.

SUMMARY: We propose to waive the requirements in 34 CFR 75.261(c)(2) and 75.250 as they apply to the projects funded in Fiscal Year (FY) 1999 under the National Research Centers authority of section 114(c)(5) and (6)(A) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (the Perkins Act). We propose these waivers in order to be able to extend the project periods for the two current grants awarded under the FY 1999 National Research Centers (National Center or Centers) competition.

The waivers as proposed would mean that: (1) Current grants may be continued at least through 2005 (and possibly for subsequent years, depending on the availability of appropriations for the National Centers in those years under the current statutory authority for the National Centers), instead of ending in 2004, and (2) we would not announce a new competition or make new awards in 2004.

We are requesting public comments on the proposed extension of project period and waivers.

DATES: We must receive your comments on or before May 27, 2004.

ADDRESSES: Address all comments about this proposed extension of project period and waivers to Ricardo Hernandez, U.S. Department of Education, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., room 11138, Potomac Center Plaza, Washington, DC 20202–7120 or Nancy L. Raynor, U.S. Department of Education, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., room 11040, Potomac Center Plaza, Washington, DC 20202–7241. If you

prefer to send your comments through the Internet, use either one of the following addresses:

Ricardo.Hernandez@ed.gov or *Nancy.Raynor@ed.gov*

FOR FURTHER INFORMATION CONTACT: Ricardo Hernandez or Nancy Raynor. Telephone (202) 245–7818 or (202) 245–7740, respectively.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice of proposed extension of project period and waivers in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed extension of project period and these proposed waivers. We are particularly interested in receiving comments on the potential impact the extension and waivers may have on the National Research Center for Career and Technical Education and the National Dissemination Center for Career and Technical Education, on potential eligible applicants under the National Centers authority, and on the entities served by these Centers.

Additionally, we invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed extension of project period and waivers. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the National Centers.

During and after the comment period, you may inspect all public comments about this proposed extension of project period and waivers in room 11138 or room 11040, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, 7110 between the hours of 8 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waivers. If you want to schedule an appointment for this type of aid, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On May 19, 1999, we published a notice in the **Federal Register** (64 FR 27410) inviting applications for new awards for FY 1999 for: (1) The National Research Center for Career and Technical Education, the purpose of which is to design and conduct, using a variety of approaches, research, development, and evaluation activities consistent with the purposes of the Perkins Act, and (2) the National Dissemination Center for Career and Technical Education, the purpose of which is to design and conduct, using a variety of approaches, national level dissemination and professional development activities consistent with the purposes of the Perkins Act. In the FY 1999 competition, we awarded a five-year cooperative agreement to the University of Minnesota for the National Research Center for Career and Technical Education and a five-year cooperative agreement to The Ohio State University for the National Dissemination Center for Career and Technical Education. These cooperative agreements are now in their fifth year, during which the Department typically would hold a competition for new National Centers. However, the Perkins Act, which includes authorization for the National Centers, expired at the end of FY 2003. Although the Perkins Act was automatically extended for one year under section 422 of the General Education Provisions Act (20 U.S.C. 1226a), with the uncertainties presented by the absence of authorizing legislation for the National Centers beyond 2004, we do not believe it would be advisable to hold a competition in 2004 for projects that would then operate for just one year, as grantees would not have time to establish and operate effective projects. Also, we are generally reluctant to announce a competition under which eligible entities would proceed through the application preparation and submission process while lacking critical information about the future of the program, and do not think that it would be in the public interest to do so in this case.

We believe, therefore, that it is preferable and in the best interest of the education community for us to review requests for continuation awards from the University of Minnesota (National Research Center for Career and Technical Education) and The Ohio State University (National Dissemination Center for Career and Technical Education) and extend the currently funded projects, rather than hold a new competition in 2004. We believe that holding a competition this year for new National Centers would create an unnecessary burden for potential grantees. Under the circumstances, authorizing current National Center grantees to request continuation awards would be a more appropriate and effective means for allowing these entities to continue their projects under this program and would also result in a more cost-effective use of Federal funds.

Education Department General Administrative Regulations Requirements

In order to provide for continuation awards after the fifth year of the National Centers' cooperative agreements, we must waive the requirements in: (1) 34 CFR 75.250, which provides that the Secretary may approve a project period of up to 60 months, and (2) 34 CFR 75.261(c)(2), which establishes the conditions for extending a project period, including prohibiting the extension of a program's project period if it involves the obligation of additional Federal funds.

The waivers as proposed would mean that: (1) The project period for the two National Centers grantees that received grants under the FY 1999 competition would be extended to December 31, 2005, instead of ending in December 2004, (2) continuation awards could be made for any additional year or years for which Congress appropriates funds under the existing statutory authority, (3) we would not announce a new competition in 2004 or make new awards in 2004, (4) the May 19, 1999, **Federal Register** notice (64 FR 27410) inviting applications for FY 1999 would govern the projects we propose to extend under this notice, and (5) the approved applications submitted by the two current grantees would govern the continuation awards.

Continuation of the Current Grantees

We would make continuation awards for the National Centers using cooperative agreements. Therefore, we would continue to expect the Department's interaction with the National Centers to be characterized by continuing and regular participation in the project, unusually close collaboration with the grantees, and intervention or direct operational involvement in the review and approval of project activities.

Decisions regarding annual continuation awards will be based on the program narratives, budgets and budget narratives, and Grant Performance Reports submitted by grantees, and on the regulations in 34 CFR 75.253.

Consistent with 34 CFR 75.253, we would award continuation grants if we determine, based on information provided by each grantee, that each grantee is making substantial progress performing approved National Center grant activities.

We do not interpret these waivers as exempting current grantees from the account closing provisions of Public Law 101–510, or as extending the availability of FY 2000 funds awarded to the grantees. As a result of Public Law 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed extension of project period and waivers and the activities required to support additional years of funding would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by this proposed extension of project period and waivers are the two FY 1999 grantees currently receiving Federal funds and the following entities that are eligible for an award under the National Centers authority:

(1) An institution of higher education.

(2) A public or private nonprofit organization or agency.

The proposed extension of project period and waivers would not have a significant economic impact on these entities because the proposed extension of project period and waivers and the activities required to support the additional years of funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed extension of project period and waivers would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard to continuation awards.

Instructions for Requesting a Continuation Award

Generally, in order to receive a continuation grant, a grantee must submit an annual program narrative that describes the activities it intends to carry out during the year of the continuation award. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application approved under the FY 1999 National Research Centers competition and related cooperative agreements. A grantee must also submit a budget and budget narrative for each year for which it requests a continuation award. (34 CFR 75.253(c)(2)). A grantee should request a continuation award at least 60 days before its current grant expires. A grantee may request a continuation award for any year for which Congress appropriates funds under the current statutory authority.

Amount of New Awards Under Continuation Grant

The actual amount of any continuation award depends on factors such as: (1) The grantee's written statement describing how the funds made available under the continuation award will be used, (2) a cost analysis of the grantee's budget by the Department, and (3) whether the unobligated funds made available are needed to complete activities that are planned for completion in the prior budget period. (34 CFR 75.232 and 75.253(c)(2)(ii) and (3)).

Paperwork Reduction Act of 1995

This notice of proposed extension of project period and waivers does not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether this proposed extension of project period and waivers would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.051 National Research Centers.)

Program Authority: 20 U.S.C. 2324(c)(5) and (6)(A).

Dated: April 21, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–9549 Filed 4–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–20; Basic Research for the Hydrogen Fuel Initiative

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of basic science, announces its interest in receiving grant applications for projects on basic research for the Hydrogen Fuel Initiative (HFI). Areas of focus include: Novel Materials for Hydrogen Storage; Membranes for Separation, Purification, and Ion Transport; Design of Catalysts at the Nanoscale; Solar Hydrogen Production; and Bio-Inspired Materials and Processes. More information on these focus areas is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Potential applicants are required to submit a brief preapplication. Preapplications referencing Program Notice DE–FG01–04ER04–20, must be received by DOE by 4:30 pm, Eastern Time, July 15, 2004. Preapplications will be reviewed for conformance with the guidelines presented in this notice and suitability in the technical areas specified in this notice. A response to the preapplications encouraging or discouraging formal applications will be communicated to the applicants within approximately forty-five days of receipt.

Only those preapplicants that receive notification from DOE encouraging a formal application may submit full proposals. No other formal applications will be considered. Formal applications in response to this notice must be received by January 4, 2005.

ADDRESSES: Preapplications referencing Program Notice DE–FG01–04ER04–20 should be sent as PDF file attachments via e-mail to: *hydrogen@science.doe.gov* with ''Notice DE–FG01–04ER04–20'' and the submission category (*e.g.*, Novel Materials for Hydrogen Storage) in the Subject line. No FAX or mail submission of preapplications will be accepted.

Formal applications referencing Program Notice DE–FG01–04ER04–20 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS help desk at: *HelpDesk@pr.doe.gov* or you may call the help desk at (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.science.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3064, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Harriet Kung, Ph.D., Office of Basic Energy Sciences, Materials Sciences and Engineering Division, SC–131, telephone: (301)903–1330, e-mail: *harriet.kung@science.doe.gov*. The full text of Program Notice DE–FG01–04ER04–20 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: President Bush, in his 2003 State of the Union address, announced a $1.2 billion hydrogen initiative to reverse America's growing dependence on foreign oil and reduce greenhouse gas emissions. DOE Office of Energy Efficiency and Renewable Energy (EERE) coordinates the DOE Hydrogen Program; efforts include R&D of hydrogen production, delivery, storage, and fuel cell technologies; technology validation; safety, codes and standards; and education *http://www.eere.energy.gov/hydrogenandfuelcells/*.

The President's 2005 Budget proposed that fundamental research within DOE Office of Science be enhanced, focused, and included in the HFI. The basic research will help overcome key technology hurdles in hydrogen production, storage, and conversion by seeking revolutionary scientific breakthroughs *http://www.ostp.gov/html/budget/2005/FY05HydrogenFuelInitiative1-pager.pdf*.

In the fall of 2002, the National Academies'' National Research Council appointed a Committee on Alternatives and Strategies for Future Hydrogen Production and Use. While addressing the topic on ''Research and Development Priorities,'' the Committee concludes that ''There are major hurdles on the path to achieving the vision of the hydrogen economy; the path will not be simple or straightforward.'' Specifically, the Academies'' report recommends a shift toward exploratory work, and calls for increased funding in important exploratory research areas with a focus on interdisciplinary scientific approaches *http://www.nap.edu/books/0309091632/html/*.

In May 2003, a workshop was sponsored by BES to identify basic research needs for hydrogen production, storage and use. The workshop report, entitled Basic Research Needs for the Hydrogen Economy *(http://www.science.doe.gov/bes/Hydrogen.pdf),* detailed a broad array of basic research challenges. These challenges depict the vast gap between present-day scientific knowledge/technology capabilities and what would be required for the practical realization of a hydrogen economy. This Notice solicits innovative basic research proposals to establish the scientific basis that underpins the physical, chemical, and biological processes governing the interaction of hydrogen with materials. We seek to support outstanding fundamental research programs to ensure that discoveries and related conceptual breakthroughs from basic research will provide a solid foundation for the innovative design of materials and processes to usher in hydrogen as the clean and sustainable fuel of the future. Five high-priority research directions, encompassing both short-term showstoppers and long-term grand challenges, will be the focus of this solicitation. They are:

1. Novel Materials for Hydrogen Storage.
2. Membranes for Separation, Purification, and Ion Transport.
3. Design of Catalysts at the Nanoscale.
4. Solar Hydrogen Production.
5. Bio-Inspired Materials and Processes.

The following provides further information under each of the five focus areas to illustrate the scope of applications solicited under the Notice.

Novel Materials for Hydrogen Storage

On-board hydrogen storage is considered to be the most challenging aspect for the successful transition to a hydrogen economy, because the performance of current hydrogen storage materials and technologies falls far short of vehicle requirements. A factor of two to three improvement in hydrogen storage capacity and energy density, and considerable improvements in hydrogen uptake and release kinetics and cycling durability are needed to achieve performance targets within the next decade. Improvements in current technologies will not be sufficient to meet the goals. The Hydrogen Storage Grand Challenge solicitation, issued by the DOE Office of Energy Efficiency and Renewable Energy (EERE) in June 2003, aims at addressing these critical performance gaps by supporting innovative R&D efforts in the areas of metal hydrides, chemical hydrides, carbon-based materials, and new materials or technologies (*http://www.eere.energy.gov/hydrogenandfuelcells/2003_storage_solicitation.html*).

As indicated in the BES hydrogen workshop report, basic research is essential for identifying novel materials and processes that can provide important breakthroughs needed to meet the HFI goals. These breakthroughs may result from research at the nanoscale facilitated by new understanding derived from both theory and experiment. The advances may not necessarily come from within the

boundaries of metal hydrides, chemical hydrides or carbon-based materials; instead success may well be found at the interstices of these classes of materials or may come from ''out-of-the-box'' concepts. Innovative basic research in the following high priority areas is needed:

• *Complex hydrides.* A basic understanding of the physical, chemical, and mechanical properties of metal hydrides and chemical hydrides is needed. Specifically, the fundamental factors that control bond strength, atomic processes associated with hydrogen update and release kinetics, the role of surface structure and chemistry in affecting hydrogen-material interactions, hydrogen-promoted mass transport, degradation due to cycling, reversibility in metal hydrides, and regeneration of chemical hydrides must be understood. Specific emphasis is also placed on innovative synthesis and processing routes (*e.g.*, solvent-free synthetic approaches), and on the exploration of multi-component complex hydrides. The effect of dopants in achieving reasonable kinetics and reversibility needs to be understood at the molecular level.

• *Nanostructured materials.* Nanophase materials offer promise for superior hydrogen storage due to short diffusion distances, new phases with better capacity, reduced heats of adsorption/desorption, faster kinetics, and surface states capable of catalyzing hydrogen dissociation. Improved bonding and kinetic properties may permit good reversibility at lower desorption temperatures. Tailored nanostructures based on light metal hydrides, carbon-based nano-materials, and other non-traditional storage approaches need to be explored with the focus on understanding the unique surfaces and interfaces of nanostructured materials and how they affect the energetics, kinetics, and thermodynamics of hydrogen storage.

• *Other materials.* Research is needed to explore other novel storage materials, *e.g.*, those based on nitrides, imides, and other materials that fall outside of metal hydrides, chemical hydrides, and carbon-based hydrogen storage materials as identified by EERE's ''Grand Challenge'' for Basic and Applied Research in Hydrogen Storage Solicitation.

• *Theory, modeling, and simulation.* Theory, modeling, and simulation will enable (1) understanding the physics and chemistry of hydrogen interactions at the appropriate size scale and (2) the ability to simulate, predict, and design materials performance in service. Examples of research areas include: hydrogen interactions with surface and bulk microstructures, hydrogen bonding, role of nanoscale, surface interactions, multiscale hydrogen interactions, and functionalized nanocarbons. The emphasis will be to establish the fundamental understanding of hydrogen-materials interactions so that completely new and revolutionary hydrogen storage media can be identified and designed.

• *Novel analytical and characterization tools.* Sophisticated analytical techniques are needed to meet the high sensitivity requirements associated with characterizing hydrogen-materials interactions, especially for nanostructured materials (*e.g.*, individual carbon nanotubes), while maintaining high specificity in characterization. In-situ studies are needed to characterize site-specific hydrogen adsorption and release processes at the molecular level.

Membranes for Separation, Purification, and Ion Transport

Membranes that selectively transport atomic, molecular, or ionic hydrogen and oxygen are vital to the hydrogen economy: they purify hydrogen fuel streams, transport hydrogen or oxygen ions between electrochemical half-reactions, and separate hydrogen in electrochemical, photochemical, or thermochemical production routes. Often these membrane functions are closely coupled with catalytic functions such as dissociation, ionization, or oxidation/reduction. Successful integration of membranes with nanocatalysts may improve the efficiency in reforming, shift chemistry and hydrogen separation utilizing different feedstocks by combining one or more of these steps.

Current membrane materials often lack sufficient selectivity to eliminate critical contaminants or to prevent leakage transport between fuel cell compartments that robs efficiency. The Nafion™ membrane, which is presently the best available for separating low temperature fuel cell chambers, is expensive and allows enough gas transport to reduce efficiency. Currently available oxide membranes, which are critical for ionic transport in higher-temperature fuel cells, are inefficient and fail to operate at the lower temperatures needed for use in transportation. Separation membranes that could operate in the rigorous chemical environment of a thermal cycle hydrogen generator would be of substantial value but are unknown at present. Overcoming these barriers will require an integrated, basic research effort to enable discovery of new membrane materials, improvement in membrane performance, and integration of membrane and catalytic functions. High priority research directions include:

• *Integrated nanoscale architectures.* The similar nanoscale dimensions of catalyst particles and of pores that transport fuel, ions, and oxygen hold promises to enable gas diffusion layers, catalyst support networks, and electrolytic membranes in fuel cells to be integrated into a single network for ion, electron, and gas transport. Chemical self-assembly of this integrated network would dramatically reduce cost and improve uniformity. Synthesis and characterization of radically new nanoscale and porous materials are required, including microporous oxides, metal-organic frameworks, and carbons that remove sulfur and carbon monoxide from hydrogen. This new approach to the design and fabrication of integrated nanoscale architectures would enable ultra-pure hydrogen to be produced from fossil, solar, thermochemical and bio-based processes. It might also revolutionize fuel cell designs.

• *Fuel cell membranes.* Novel membranes with higher ionic conductivity, better mechanical strength, lower cost, and longer life are critical to the success of fuel cell technologies. Polymeric membranes that conduct protons and remain hydrated to 120–150° C are needed to reduce the purity requirements and enable the use of non-noble-metal catalysts. Solid oxide fuel cells need lower-temperature oxide-ion membranes to minimize corrosion and differential thermal expansion, while maintaining selectivity and permeability. Many thermal water-splitting cycles subject materials to harshly corrosive, high temperature environments. Sorbents and membranes that are stable and durable in such environments are needed for efficient thermal cycles. Achieving these goals will require discovery of better, more durable materials, as well as better understanding and control of the electrochemical processes at the electrodes and membrane electrolyte interfaces.

• *Theory, modeling, and simulation of membranes and fuel cells.* Fundamental understanding of the selective transport of molecules, atoms, and ions in membranes is in its infancy. The diversity of transport mechanisms and their dependence on local defect structure requires extensive theory, modeling and simulation to establish the basic principles and design strategies for improved membrane

materials. The emphasis is to understand the nature of proton transport in polymer electrolyte membranes; the interaction of complex aqueous, gaseous, and solid interfaces in gas diffusion electrode assemblies; the nature of corrosion processes under applied electrochemical potentials and in oxidative media; and the origin of the performance robbing overpotential for fuel cell cathodes.

Design of Catalysts at the Nanoscale

Catalysis is vital to the success of the HFI owing to its roles in converting solar energy to chemical energy, producing hydrogen from water or carbon-containing fuels such as coal and biomass, and producing electricity from hydrogen in fuel cells. Catalysts can also increase the efficiency of the uptake and release of stored hydrogen with reduced need for thermal activation. Breakthroughs in catalytic research would impact the thermodynamic efficiency of hydrogen production, storage, and use, and thus improve the economic efficiency with which the primary energy sources—fossil, biomass, solar, or nuclear—serve our energy needs. Most fuel-cell and low-temperature reforming catalysts are based on expensive noble metals (*e.g.*, platinum), and their limited reserves threaten the long-term sustainability of a hydrogen economy. High priority research directions include:

- *Nanoscale catalysts.* Nanostructured materials—with high surface areas and large numbers of controllable sites that serve as active catalytic regions—open new opportunities for significantly enhancing catalytic activity and specificity. The concepts, technologies, and synthetic capabilities derived from research at the nanoscale now provide new approaches for the controlled production of catalysts. Specific emphasis is on elucidating the atomic and molecular processes involved in catalytic activity, selectivity, deactivation mechanisms, and on understanding the special properties that emerge at the nanoscale.
- *Innovative synthetic techniques.* Emerging technologies that allow synthesis at the nanoscale with atomic-scale precision will open new opportunities for producing tailored structures of catalysts on supports with controlled size, shape and surface characteristics. New, high-throughput innovative synthesis methods can be exploited in combination with theory and advanced measurement capabilities to accelerate the development of designed catalysts. In addition, novel, cost-effective fabrication methods need to be developed for the practical application of these new designer catalysts. The interplay between theory and experiment forms a recursive process that will accelerate the development of predictive models to support the development of optimized catalysts for specific steps in hydrogen energy processing.
- *Novel characterization techniques.* To fully understand complex catalytic mechanisms will require detailed characterization of the active sites; identification of the interaction of the reactants, intermediates and products with the active sites; conceptualization and, possibly, detection of the transition states; and quantification of the dynamics of the entire catalytic process. This will entail the production of well-defined materials that can be characterized at the atomic level. Special focus is placed on developing new analytical tools to permit the determination of the interatomic arrangements, interactions and transformations *in situ, i.e.*, during reaction, in order to reveal details about reaction mechanisms and catalyst dynamics.
- *Theory, modeling, and simulation of catalytic pathways.* Computational methods have now developed to the point that entire reaction pathways can be identified and these advances will allow trends in reactivity to be understood. Close coupling between experimental observations and theory, modeling, and simulation will provide unprecedented capabilities to design more selective, robust, and impurity-tolerant catalysts for hydrogen production, storage, and use. This approach will enable the design and control of the chemical and physical properties of the catalyst, its supporting structure, and the associated molecular processes at the nanoscale.

Solar Hydrogen Production

The sun is Earth's most plentiful source of energy, and it has sufficient capacity to fully meet the global needs of the next century without potentially destructive environmental consequences. Efficient conversion of sunlight to hydrogen by splitting water through photovoltaic cells driving electrolysis or through direct photocatalysis at energy costs competitive with fossil fuels is a major enabling milestone for a viable hydrogen economy. Basic strategies for cost effective solar hydrogen production are rooted in fundamental scientific breakthroughs in chemical synthesis, self-assembly, charge transfer at nanoparticle interfaces, and photocatalysis. High priority research directions for solar hydrogen include:

- *Nanoscale structures.* The sequential processes of light collection, charge separation, and transport in photovoltaic and photocatalytic devices require nanoscale architectural control and manipulation. Nanoscale assemblies of multiple wavelength absorbers (*e.g.*, semiconductor quantum dots), nanoscale polymer or molecular diodes that prevent recombination, and employing short collection lengths between the excitation and collection points have the potential to dramatically improve efficiencies. Semiconductor-metal nanocomposites show promise for improved light-harvesting and charge-separation efficiency. Incorporation of multielectron redox catalysts for direct water splitting greatly simplify the water splitting process and offer new horizons for improved photocatalytic hydrogen production.
- *Light harvesting and novel photoconversion concepts.* New strategies are needed to efficiently use the entire solar spectrum. These strategies could involve molecular photon antennas, junctions containing multiple absorbers, and up- and down-conversion of light to the appropriate wavelengths. Dye-sensitized TiO_2 nanocrystalline solar cells have emerged as a potential, cost effective alternative to silicon solar cells. New photochemical sensitizers are needed (*e.g.* bi- and trimetallic transition metal complexes) that absorb in the visible and near-infrared and that are efficient injectors of electrons into semiconductor nanoparticles. Solid-state molecule-based solar photochemical conversion, however, offers distinct advantages over liquid junction dye-sensitized nanocrystalline solar cells. Multicomponent molecular architectures are envisioned in which bioinspired multiredox catalysts are incorporated within durable polymer, zeolite, or membrane organizing environments for vectorial electron transfer. The exploitation of higher energy radiation to produce charge carriers would enable the use of corrosion-resistant wide band-gap semiconductors without sensitizers for hydrogen production.
- *Organic semiconductors and other high performance materials.* The organic semiconductors offer an inexpensive alternative to traditional semiconductors for photovoltaic and photocatalytic devices. Basic research on the fundamental charge excitation, separation, and collection processes in organics and their dependence on nanoscale structure is needed to bring their efficiency from the current 3% to

10% or more, which is needed for economically competitive photovoltaic and photocatalytic hydrogen production. In addition, novel materials for transparent conductors, electrocatalysts, electron- and hole-conducting polymers, and for charge promoting separation in liquid crystals and organic thin films are needed for novel photovoltaic and photocatalytic solar hydrogen production.

• *Theory, modeling, and simulation of photochemical processes.* Theory and modeling are needed to develop a predictive framework for the dynamic behavior of molecules, complex photoredox systems, interfaces, and photoelectrochemical cells. As new physical effects are discovered and exploited, particularly those involving semiconductor nanoparticles and supramolecular assemblies, challenges emerge for theory to accurately model the behavior of complex systems over a range of time and length scales.

Bio-Inspired Materials and Processes

Direct production of hydrogen from water and other carbon neutral sources using sunlight (solar radiation) offers real promises in realizing a clean and sustainable energy future, but there are many obstacles to efficient and cost-effective technologies. Fortunately, plants and some bacteria are endowed with enzymes and catalysts that can produce hydrogen while powered by sun light or fermentation-derived energy at operating temperatures ranging from 0° C to 100° C. While inherent biological inefficiencies and public sensitivity to genetically engineered organisms may need to be overcome for biological production of hydrogen to become competitive and viable, a fundamental understanding of the molecular machinery of biological systems could provide the knowledge that is needed to design artificial, bio-inspired materials that make solar photochemical production of hydrogen a reality. Our current knowledge of many of the basic aspects of these biological processes is limited.

Fundamental research into the molecular mechanisms underlying biological hydrogen production is the essential key to our ability to adapt, exploit, and extend what nature has accomplished for our own renewable energy needs. Important research directions include:

• *Enzyme catalysts.* A fundamental understanding is needed of the structure and chemical mechanism of enzyme complexes that support hydrogen generation. For example, photochemical hydrogen production requires biology-inspired catalysts that (1) can operate at the very high potential required for water oxidation, (2) can perform a four-electron reaction to maximize energetic efficiency and avoid limiting cathode overpotentials, and (3) can avoid production of corrosive intermediates (such as hydroxyl radicals), and mediate proton-coupled redox reactions. Research approaches would likely include novel analytical technologies and would merge aspects of disparate biological and physical techniques.

• *Bio-hybrid energy coupled systems.* As more is understood about biocatalytic hydrogen production, there is the possibility that critical enzymes that are synthesized and employed by biological systems can be harvested and combined with synthetic materials to construct robust, efficient hybrid systems that are scalable to hydrogen production facilities. Before we can efficiently apply biological catalysts to hydrogen generation, we need to understand how these catalysts are assembled with their cofactors into integrated systems. How are these multi-component systems organized, continually refreshed, and maintained, while remaining functional in the face of damaging side reactions or changing external environmental conditions? Can the natural enzymes be reduced in size and complexity to contain the essential catalytic activity while removing the complex regulation and signaling components that are required for integration into functioning biological species?

• *Theory, modeling, and nanostructure design.* Taking cues from these various natural processes, computational approaches may be employed for rational redesign of enzymes for improved hydrogen production, reduced sensitivity to inhibitors, and improved stability. Emerging capabilities in nanoscale science hold particular promise for harnessing the chemical processes inherent in bio-inspired hydrogen production. For example, nanoscale structures can be designed to spatially separate oxygen and hydrogen formation during photochemical water splitting for a biomimetic or biohybrid system that circumvents problems with inactivation of catalytic sites. Research at the nanoscale is challenging, but offers the promise of inexpensive materials for overcoming current kinetic constraints in hydrogen energy systems.

Program Funding

It is anticipated that up to $12 million annually will be available for multiple awards for this notice. Initial awards will be in Fiscal Year 2005, and applications may request project support for up to three years. All awards are contingent on the availability of funds and programmatic needs.

Preapplication

The preapplication should consist of a description of the research proposed to be undertaken by the applicant including a clear explanation of its importance to the advancement of basic hydrogen research and its relevance to the HFI. The preapplication must include a cover sheet downloadable at: *http://www.science.doe.gov/bes/HFI_preapp_cover_grants.pdf* to identify the institution, Principal Investigator name(s), address(es), telephone and fax number(s) and e-mail address(es), the title of the project, the submission category, and the yearly breakdown of the total budget request. A brief (one-page) vitae should be provided for each Principal Investigator. The preapplication should consist of a maximum of 3 pages of narrative (including text and figures) describing the research objectives, approaches to be taken, the institutional setting, and a description of any research partnership if appropriate.

Full Application

The Department of Energy will accept Full Applications by invitation only, based upon the evaluation of the preapplications. After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications. The Project Description must not exceed 20 pages, including tables and figures, but exclusive of attachments. The application must contain an abstract or project summary, short vitae, and letters of intent from collaborators if appropriate. The application should also contain one paragraph addressing how the proposed research will address one or more of the four BES long-term program measures used by the Office of Management and Budget to rate the BES program annually; these measures may be found at: *http://www.sc.doe.gov/bes/BES_PART_Long_Term_Measures_FEB04.pdf.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed below as codified at 10 CFR 605.10 (d) for the university projects.

1. Scientific and/or Technical Merit of the Project, 2. Appropriateness of the Proposed Method of Approach, 3.

Competency of Applicant's Personnel and Adequacy of Proposed Resources, 4. Reasonableness and Appropriateness of the Proposed Budget, 5. Basic research that is relevant to the Administration's Hydrogen Fuel Initiative.

The external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Other information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures including detailed procedures for submitting applications from multi-institution partnerships may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available at: *http://www.science.doe.gov/production/grants/grants.html.*

Coordination and Integration With the DOE Offices of Energy Efficiency and Renewable Energy (EERE), Fossil Energy (FE), and Nuclear Energy, Science and Technology (NE) Hydrogen Programs

The proposal solicitation and selection processes will be coordinated with EERE, FE, and NE's programs to ensure successful integration of the basic research components with the applied technology programs. Specifically, input from EERE, FE and NE have been incorporated in the formulation of this announcement, and further input will be solicited in the review processes. There will also be an annual Contractors' Meeting for all participants in the BES program to help coordinate and integrate research efforts related to hydrogen research. The Annual Contractors' Meeting of BES principal investigators will be coordinated with EERE, FE and NE, and will include presentations on applied research and development needs from researchers inside and outside of the Contractors' group.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC.

Martin Rubinstein,

Acting Director, Grants and Contracts Division, Office of Science.

[FR Doc. 04–9525 Filed 4–26–04; 8:45 am]

BILLING CODE 645–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–201–001]

ANR Pipeline Company; Notice of Compliance Filing

April 20, 2004.

Take notice that on April 14, 2004, ANR Pipeline Company (ANR) tendered for filing its transmittal letter and appendix.

ANR states that the transmittal letter and appendix is being filed in compliance with the Commission's order issued March 30, 2004 in the referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–928 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–62–001]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Tariff Filing

April 20, 2004.

Take notice that on April 14, 2004, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective on June 1, 2004:

Fifth Revised Sheet No. 252

MRT states that the purpose of this filing is to modify MRT's tariff to include Web site notifications, in addition to notification by mail of the Annual Penalty Revenue Credits as directed in the Commission's Order, dated March 26, 2004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–922 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–257–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 20, 2004.

Take notice that on April 15, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the revised tariff sheets attached as Appendix A to the filing, with a proposed effective date of June 1, 2004.

CEGT states that the purpose of this filing is to revise its tariff to make certain changes that are primarily of a ''housekeeping'' nature.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–930 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–007]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

April 20, 2004.

Take notice that on April 16, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective April 1, 2004:

Seventeenth Revised Sheet No. 9
Fourteenth Revised Sheet No. 10

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities and shipper names.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–924 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–197–001]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

April 20, 2004.

Take notice that on April 15, 2004, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Fourth Revised Sheet No. 10, with an effective date of April 1, 2004.

Cove Point states that the purpose of this filing is to comply with the Commission's Order dated March 31, 2004, which accepted, subject to certain conditions, Cove Point's annual fuel retainage adjustment filing, which was filed pursuant to Section 1.41 of the General Terms and Conditions of its FERC Gas Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–927 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–248–000]

El Paso Natural Gas Company; Notice of Further Extension of Time

April 19, 2004.

On April 16, 2004, UNS Gas, Inc. (UNS Gas) filed a motion for an extension of time for the filing of interventions, comments, and protests in response to the filing made by El Paso Natural Gas Company (El Paso) on April 1, 2004, in the above-docketed proceeding. In its motion, UNS Gas states that due to the length and complexity of El Paso's tariff filing in this docket and in related dockets, more time is needed to prepare and file a response. UNS Gas's motion also states that El Paso has no objection to the request for additional time. Further, the motion also states that the extension request is supported by Arizona Electric Power Cooperative, Inc., Public Service Company of New Mexico, Salt River Project Agricultural improvement and Power District and Texas Gas Service, a division of ONEOK, Inc.

On April 7, 2004, the Commission extended the time to respond to El Paso's filing in this docket to April 20, 2004. Upon consideration, notice is hereby given that an extension of time for the filing of comments, interventions, and protests pertaining to El Paso's April 1, 2004, filing in RP04–248–000 is granted to and including May 3, 2004, as requested by UNS Gas.

Magalie R. Salas,

Secretary.

[FR Doc. E4–932 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–70–007]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

April 20, 2004.

Take notice that on April 15, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed on Appendix A to the filing, with an effective date of May 8, 2003.

GTN states that the filing is being made to comply with the Commission's March 30, 2004 Order on Compliance and Petition for Clarification in this proceeding.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–926 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–256–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

April 20, 2004.

Take notice that on April 14, 2004, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective May 14, 2004.

Second Revised Sheet No. 4750
First Revised Sheet No. 4751
First Revised Sheet No. 4752
First Revised Sheet No. 4753
First Revised Sheet No. 4754
First Revised Sheet No. 4755
First Revised Sheet No. 4756
First Revised Sheet No. 4757
First Revised Sheet No. 4758
First Revised Sheet No. 4759
First Revised Sheet No. 4760
First Revised Sheet No. 4761
Original Sheet No. 4762
Original Sheet No. 4763
Sheet Nos. 4764—4799

Gulf South states that it is proposing to add pro forma discount letter agreements to its tariff for Rate Schedules FTS, ITS and NNS. Gulf South asserts that these pro forma agreements are consistent with the general terms and conditions of Gulf South's tariff and will streamline the contracting practices of Gulf South.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–929 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–55–000]

Haviland Holdings, Inc. v. Public Service Company of New Mexico; Notice of Initiation of Proceeding and Refund Effective Date

April 19, 2004.

Take notice that on April 16, 2004, the Commission issued an order in the above-referenced proceeding initiating an investigation in Docket No. EL04–55–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–55–000 established pursuant to section 206(b) of the Federal Power Act is March 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–931 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 287]

Midwest Hydro, Inc.; Notice of Authorization for Continued Project Operation

April 19, 2004.

On April 8, 2002, Midwest Hydro, Inc., licensee for the Dayton Project No. 287, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 287 is located on the Fox River in LaSalle County, Illinois.

The license for Project No. 287 was issued for a period ending April 10, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 287 is issued to Midwest Hydro, Inc. for a period effective April 11, 2004, through April 10, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 11, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Midwest Hydro, Inc. is authorized to continue operation of the Dayton Project No. 287 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E4–935 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–533–000, RP03–540–000 and RP99–176–089]

Northern Natural Gas Company, Transcontinental Gas Pipe Line Corporation and Natural Gas Pipeline Company of America; Notice Further Deferring Submission of Staff Reports

April 19, 2004.

1. On July 31, 2003, and August 8, 2003, respectively, the Commission issued orders accepting and suspending certain tariff sheets, subject to further proceedings, in *Northern Natural Gas Company*, Docket No. RP03–533–000, *Transcontinental Gas Pipe Line Corporation*, Docket No RP03–540–000, and *Natural Gas Pipeline Company of America*, Docket No. RP99–176–089. In those orders, the Commission accepted tariff sheets making changes in natural gas price indices referred to in the tariffs of each company. In all instances, the Commission accepted and suspended the tariff sheets, permitting them to become effective, but subject in all three cases to further action by the Commission following receipt of a report from the Commission Staff.

2. On January 27, 2004, and February 6, 2004, the Commission issued a ''Notice Deferring Submission of Staff Report'' from the original due dates to April 30, 2004. By this notice, the date by which the staff shall submit reports in the above-captioned matters shall be further deferred to no later than May 5, 2004.

By direction of the Commission. Commissioner Kelly not participating.

Magalie R. Salas,

Secretary.

[FR Doc. E4–925 Filed 04–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–381–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

April 19, 2004.

Take notice that on March 31, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, tariff sheets listed below, to be effective May 1, 2004.

Texas Eastern states that the purpose of this filing is to comply with the Commission's orders issued in the captioned docket on October 31, 2002, and February 28, 2003, in which the Commission approved Texas Eastern's application for a certificate of public convenience and necessity authorizing the construction of certain pipeline facilities referred to as the M–1 Expansion Project. Texas Eastern states that the revised tariff sheets reflect the recourse rates for the M–1 Expansion Project service, and incorporate references to the new incremental M–1 Expansion Project service into Rate Schedule FT–1 and the General Terms and Conditions of the Tariff. Specifically, Texas Eastern notes that the tariff sheets reflect a maximum reservation rate of $7.212 per Dth per month, or $0.2371 per Dth on a 100% load factor basis.

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested State commissions.

Texas Eastern's proposed tariffs sheets to its FERC Gas Tariff, Seventh Revised

Volume No. 1 to be effective May 1, 2004 are:

Original Sheet No. 40A
Fifth Revised Sheet No. 211
Third Revised Sheet No. 213
Third Revised Sheet No. 501
Third Revised Sheet No. 529
Fifth Revised Sheet No. 624
Fourth Revised Sheet No. 627

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: April 26, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–940 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1335–002, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Filings

April 19, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Commonwealth Edison Company

[Docket No. ER03–1335–002]

On April 14, 2004, the Commission issued a Notice of Filing in the above-referenced proceeding. By this Errata Notice the comment date is corrected to read: April 26, 2004.

2. PJM Interconnection, L.L.C.

[Docket Nos. ER04–368–002 and ER04–368–003]

Take notice that on April 13, 2004, as supplemented on April 14, 2004, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing pursuant to the Commission's Letter Order issued March 15, 2004 in Docket No. ER04–368–002.

PJM states that copies of this filing were served upon persons designated on the official service list compiled by the Secretary in this proceeding and the parties to the agreements.

Comment Date: May 4, 2004.

3. Idaho Power Company

[Docket No. ER04–512–001]

Take notice that on April 14, 2004 Idaho Power Company (Idaho Power) submitted a compliance filing pursuant to the Commission's order issued March 30, 2004 in Docket No. ER04–512–001, 106 FERC ¶ 61,329.

Comment Date: May 5, 2004.

4. Southern California Edison Company

[Docket No. ER04–533–001]

Take notice that on April 14, 2004, Southern California Edison Company (SCE) submitted a compliance filing pursuant to the letter order issued April 1, 2004 in Docket No. ER04–533–000.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: May 5, 2004.

5. Allegheny Energy Supply Company, LLC

[Docket No. ER04–730–000]

Take notice that on April 13, 2004, Allegheny Energy Supply Company, LLC (AE Supply) tendered for filing an executed Master Full Requirements Service Agreement along with three transaction confirmations entered into with The Potomac Edison Company pursuant to a competitive solicitation for standard offer service that was supervised by the Maryland Public Service Commission, all as more fully described in the application. AE Supply has requested waiver of the prior notice filing requirements to permit an effective date of January 1, 2005.

Comment Date: May 4, 2004.

6. San Diego Gas & Electric Company

[Docket No. ER04–731–000]

Take notice that on April 13, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing of an amendment to its the transmission rate formula that was accepted by the Commission in its Order Approving Uncontested Settlement, dated December 18, 2003, in *San Diego Gas & Electric Company*, 105 FERC ¶ 61,301 (2003).

SDG&E states that copies of the filing were served on the California Public Utilities Commission, the California Independent System Operator, and all other parties in Docket No. ER03–610–000.

Comment Date: May 4, 2004.

7. FPL Energy Mason, LLC

[Docket No. ER04–732–000]

Take notice that on April 13, 2004, FPL Energy Mason, LLC, (FPLE Mason) tendered for filing a Notice of Cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER98–3562–000.

Comment Date: May 4, 2004.

8. Utility Contract Funding II, LLC

[Docket No. ER04–733–000]

Take notice that on April 13, 2004, Utility Contract Funding II, LLC, (UCF II) pursuant to section 205 of the Federal Power Act and sections 35.16 and 131.51 of the Commission regulations, filed a Notice of Succession to adopt CES Marketing II, LLC's market-based rate authorization. UCF II requests waiver of section 35.16 of the regulations to the extent necessary to permit the Notice of Succession to become effective April 14, 2004.

Comment Date: May 4, 2004.

9. Barclays Bank PLC

[Docket No. ER04–734–000]

Take notice that on April 13, 2004, Barclays Bank PLC (Barclays) petitioned the Commission for acceptance of Barclays' Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: May 4, 2004.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–735–000]

Take notice that on April 14, 2004, pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13 (2003), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a fully executed revised Interconnection and Operating Agreement among FPL Energy North Dakota Wind II, LLC, the

Midwest ISO and Otter Tail Power Company, Inc., a division of Otter Tail Corporation.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: May 5, 2004.

11. Commonwealth Edison Company

[Docket No. ER04–736–000]

Take notice that on April 14, 2004, Commonwealth Edison Company (ComEd) submitted for filing twenty-four (24) unexecuted Service Agreements entered into between ComEd and Edison Mission Marketing & Trading Inc. under ComEd's Open Access Transmission Tariff. ComEd requests an effective date of April 1, 2005 for all of the Service Agreements.

ComEd states that copies of the filing were served upon Edison Mission Marketing & Trading Inc. and the Illinois Commerce Commission.

Comment Date: May 5, 2004.

12. Commonwealth Edison Company

[Docket No. ER04–737–000]

Take notice that on April 14, 2004, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement entered into between ComEd and Exelon Generation Company LLC under ComEd's Open Access Transmission Tariff. ComEd requests an effective date of June 1, 2004 for the Service Agreement.

ComEd states that copies of the filing were served upon Exelon Generation Company LLC and the Illinois Commerce Commission.

Comment Date: May 5, 2004.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–738–000]

Take notice that on April 15, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)submitted for filing a Notice of Succession of certain Transmission Service Agreements and Network Integration Transmission Service and Operating Agreements entered into by and between Ameren Services Company, as agent for its electric utility affiliates, Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a AmerenCIPS (Ameren) and various transmission customers. Midwest ISO has requested an effective date of May 1, 2004.

Midwest ISO states that it has served a copy of this filing upon the affected customers and has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter and Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: May 6, 2004.

14. Idaho Power Company

[Docket No. ER04–739–000]

Take notice that on April 14, 2004 Idaho Power Company (Idaho Power) submitted for filing: First Revised Service Agreement No. 141 Superseding Original Service Agreements Nos. 141 and 142 Under FERC Electric Tariff First Revised Volume No. 5 for Network Integration Transmission Service (NITSA) between Idaho Power and PacifiCorp; Second Revised Service Agreement No. 154 Superseding First Revised Service Agreement No. 154 Under FERC Electric Tariff First Revised Volume No. 5 for NITSA Service between Idaho Power and Bonneville Power Administration (BPA) pursuant to which BPA serves its customer Raft River Electric Cooperative; Third Revised Service Agreement No. 155 Superseding Second Revised Service Agreement No. 155 Under FERC Electric Tariff First Revised Volume No. 5 for NITSA Service between Idaho Power and BPA, pursuant to which BPA serves its customer Oregon Trail Electric Cooperative; and Second Revised Service Agreement No. 159 Under FERC Electric Tariff First Revised Volume No. 5 for NITSA service between Idaho Power and Idaho Power-Power Supply pursuant to which Idaho Power-Power Supply serves Raft River Loads.

Comment Date: May 5, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–921 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1432–003, et al.]

Kincaid Generation, L.L.C., et al.; Electric Rate and Corporate Filings

April 20, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Kincaid Generation, L.L.C.

[Docket No. ER99–1432–003]

Take notice that on April 16, 2004, Kincaid Generation, L.L.C. (KGL) tendered for filing docket tariff sheets that modify its market based rate tariff by adding the Market Behavior Rules that the Commission adopted in its November 17, 2003, order, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003) to be effective December 17, 2003.

KGL states that copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission, Ohio Public Utilities Commission, the Public Service Commission of West Virginia and the Pennsylvania Public Service Commission.

Comment Date: May 7, 2004.

2. Elwood Energy LLC

[Docket No. ER99–1695–003]

Take notice that on April 16, 2004, Elwood Energy LLC (the Company) tendered for filing tariff sheets that

modify its market based rate tariff by adding the Market Behavior Rules that the Commission adopted in its order issued November 17, 2003, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), with an effective date of December 17, 2003.

The Company states that copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission, Ohio Public Utilities Commission, the Public Service Commission of West Virginia and the Pennsylvania Public Service Commission.

Comment Date: May 7, 2004.

3. Occidental Power Marketing, L.P.

[Docket No. ER99–3665–004]

Take notice that on April 15, 2004, Occidental Power Marketing, L.P., submitted for filing a triennial market power analysis in support of its authorization to purchase and sell electric capacity and energy at market-based rates.

Comment Date: May 6, 2004.

4. Dominion Nuclear Connecticut, Inc.

[Docket No. ER00–3621–003]

Take notice that on April 16, 2004 Dominion Nuclear Connecticut, Inc. tendered for filing tariff sheets that modify its market based rate tariff by adding the Market Behavior Rules that the Commission adopted in its order issued November 17, 2003, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) to be effective December 17, 2003.

Dominion Nuclear Connecticut, Inc. states that copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission, Ohio Public Utilities Commission, the Public Service Commission of West Virginia and the Pennsylvania Public Service Commission.

Comment Date: May 7, 2004.

5. Dominion Nuclear Marketing III, L.L.C.

[Docket No. ER00–3746–004]

Take notice that on April 16, 2004, Dominion Nuclear Marketing III, L.L.C. tendered for filing tariff sheets that modify its market based rate tariff by adding the Market Behavior Rules that the Commission adopted in its order issued November 17, 2003, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003) to be effective December 17, 2003.

Dominion Nuclear Marketing III, L.L.C. states that copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission, Ohio Public Utilities Commission, the Public Service Commission of West Virginia and the Pennsylvania Public Service Commission.

Comment Date: May 7, 2004.

6. ISO New England Inc.

[Docket No. ER01–316–012]

Take notice that on April 16, 2004, ISO New England Inc. filed its Index of Customers for the first quarter of 2004 under its Tariff for Transmission Dispatch and Power Administration Services.

Comment Date: May 7, 2004.

7. Dominion Energy Marketing, Inc.

[Docket No. ER01–468–002]

Take notice that on April 16, 2004, Dominion Energy Marketing, Inc. tendered for filing tariff sheets that modify its market based rate tariff by adding the Market Behavior Rules that the Commission adopted in its order issued November 17, 2003, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) to be effective December 17, 2003.

Dominion Energy Marketing, Inc. states that copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission, Ohio Public Utilities Commission, the Public Service Commission of West Virginia and the Pennsylvania Public Service Commission.

Comment Date: May 7, 2004.

8. Pacific Gas and Electric Company

[Docket No. ER04–413–001]

Take notice that on April 15, 2004, Pacific Gas and Electric Company (PG&E) submitted a filing in compliance with the Commission's Order issued March 17, 2004, in Docket No. ER04–413–000. PG&E also tendered for filing Executed Generator Special Facilities Agreements and Generator Interconnection Agreements between PG&E and Shiloh Wind Partners, LLC (Shiloh) and Kings River Conservation District (Kings River).

PG&E states that copies of this filing have been served upon Shiloh, Kings River, Dinuba Energy Inc., the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: May 6, 2004.

9. Pacific Gas and Electric Company

[Docket No. ER04–415–001]

Take notice that on April 16, 2004, Pacific Gas and Electric Company (PG&E) filed additional information, in response to the Commission's deficiency letter issued March 15, 2004, regarding PG&E's January 20, 2004, filing of Generator Special Facilities Agreements and Generator Interconnection Agreements with Berry Petroleum Company—Tannehill Cogen, Berry Petroleum Company—University Cogen, and Big Creek Water Works, Ltd., as well as an Interim Special facilities Agreement and Interim Parallel Operating Agreement with Big Creek.

PG&E states that copies of this filing have been served upon Berry Tannehill, Berry University, Big Creek, the California Independent System Operator Corporation, the California Public Utilities Commission, and the parties to this docket.

Comment Date: May 7, 2004.

10. Core Equities, Inc.

[Docket No. ER04–646–001]

Take notice that on April 14 2004, Core Equities, Inc. (Core) filed a supplement to its March 15, 2004, application for market-based rates as a power marketer in Docket No. ER04–646–000.

Comment Date: May 6, 2004.

11. Pinpoint Power, LLC

[Docket No. ER04–740–000]

Take notice that on April 15, 2004, Pinpoint Power, LLC (Pinpoint) filed an Agreement for Supplemental Installed Capacity Southwest Connecticut (LRP Resources)—Honeywell Direct Load Control (Agreement) with ISO New England Inc. (ISO–NE) in compliance with section 205 of the Federal Power Act and the Commission's order issued February 27, 2004, in Docket No. ER04–335–000, New England Power Pool, 106 FERC ¶ 61,190 (2004). Pinpoint states that it seeks expedited action on its filing and a waiver of the prior notice filing requirements to allow the Agreement to become effective on June 1, 2004, to allow ISO–NE to address near-term reliability issues in NEPOOL.

Pinpoint also states that copies of its filing were sent to ISO–NE.

Comment Date: May 6, 2004.

12. Pinpoint Power, LLC

[Docket No. ER04–741–000]

Take notice that on April 15, 2004, Pinpoint Power, LLC (Pinpoint) filed an Agreement for Supplemental Installed Capacity Southwest Connecticut (LRP

Resources) (Agreement) with ISO New England Inc. (ISO–NE) in compliance with section 205 of the Federal Power Act and the Commission's order issued February 27, 2004, in Docket No. ER04–335–000, New England Power Pool, 106 FERC ¶ 61,190 (2004). Pinpoint seeks expedited action on its filing and a waiver of the prior notice filing requirements to allow the Agreement to become effective on June 1, 2004, to allow ISO–NE to address near-term reliability issues in NEPOOL.

Pinpoint also states that copies of its filing were sent to ISO–NE.

Comment Date: May 6, 2004.

13. Comverge, Inc.

[Docket No. ER04–744–000]

Take notice that on April 16, 2004, Comverge, Inc. (Comverge) filed an Agreement for Supplemental Installed Capacity Southwest Connecticut between ISO New England, Inc. and Comverge, Inc., in compliance with the Commission's order issued February 27, 2004, in Docket No. ER04–335–000, *New England Power Pool*, 106 FERC ¶ 61,190 (2004). Comverge seeks expedited action on its filing and a waiver of the prior notice filing requirement to allow the Agreement to become effective on the earliest date possible.

Comverge states that copies of the filing were served on the ISO–NE.

Comment Date: May 7, 2004.

14. CAM Energy LLC

[Docket No. ER04–745–000]

Take notice that on April 16, 2004, CAM Energy LLC (Applicant) tendered for filing an application for acceptance of CAM Energy LLC's FERC Electric Rate Schedule No. 1, and the grant of waivers and blanket approvals under various regulations of the Commission. Applicant states that it is seeking authority to make sales of electrical capacity, energy, ancillary services, and Firm Transmission Rights, Congestion Credits, Fixed Transmission Rights, and Auction Revenue Rights, as well as reassignments of transmission capacity, to wholesale customers at market-based rates. Applicant requests waiver of the 60-day prior notice requirement to permit the Rate Schedule to be effective April 17, 2004, and requests expeditious Commission approval of this Application on or before June 1, 2004.

Comment Date: May 7, 2004.

15. Northwestern Wisconsin Electric Company

[Docket No. ER04–746–000]

Take notice that on April 16, 2004, Northwestern Wisconsin Electric Company, (NWEC) tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2, an Interconnection and Facility Use Agreement between Dairyland Power Cooperative (Dairyland) and NWEC. NWEC requests this Rate Schedule Change become effective May 1, 2004.

NWEC states that copies of this filing have been provided to Dairyland and to the Public Service Commission of Wisconsin.

Comment Date: May 7, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–941 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PF04–2–000 and PF04–5–000]

BP Crown Landing, LLC and Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Crown Landing LNG and Logan Lateral Projects, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

April 19, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of BP Crown Landing, LLC's (Crown Landing) Crown Landing LNG Project located in Gloucester County, New Jersey and New Castle County, Delaware. The EIS will also address the associated Texas Eastern Transmission, LP's (Texas Eastern) Logan Lateral Project in Gloucester County, New Jersey and Delaware County, Pennsylvania. This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the projects. Your input will help the Commission staff determine which issues need to be evaluated in the EIS. Please note that the scoping period will close on June 21, 2004.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meetings that are scheduled as follows:

Wednesday, May 5, 2004, 7 p.m., Robert E. Wilson Community Center, 1150 Engle Street, Chester Township, PA, (610) 494–4149.

Thursday, May 6, 2004, 7 p.m., Holiday Inn, One Pureland Drive (I–295 at Exit 10), Swedesboro, NJ, (856) 467–3322.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers in this proceeding. We encourage government representatives to notify their constituents of these planned projects and encourage them to comment on their areas of concern.

Summary of the Proposed Projects

Crown Landing proposes to construct and operate an LNG import terminal on the eastern shoreline of the Delaware River in Logan Township, New Jersey. The LNG terminal would consist of facilities capable of unloading LNG ships, storing up to 450,000 cubic meters of LNG (9.2 billion cubic feet of natural gas equivalent), vaporizing the LNG, and sending out natural gas at a rate of up to 1.2 billion cubic feet per day. Crown Landing proposes to interconnect the LNG facilities on site with two existing pipelines owned and operated by Columbia Gas Transmission Company and Transcontinental Gas Pipe Line Corporation. In addition, Texas Eastern would construct and operate a lateral from its Chester Junction facility in Chester, Pennsylvania to the proposed LNG terminal. The LNG terminal and pipeline facilities would consist of:

- A ship unloading facility capable of receiving LNG ships with capacities up to 200,000 cubic meters;
- Three 150,000 cubic meter (net capacity) full-containment LNG storage tanks, comprised of 9 percent nickel steel inner tank, pre-stressed concrete outer tank, and a concrete roof;
- A closed loop shell and tube heat exchanger vaporization system;
- Various ancillary facilities, including administrative offices, warehouse/maintenance building, main control center, guardhouse, and a pier control room;
- Three meter and regulation stations located on the proposed LNG terminal site; and
- Approximately 9.6 miles of 30-inch-diameter natural gas pipeline (4.9 miles in Pennsylvania and 4.7 miles in New Jersey), a main line valve, and a meter and regulation station located on the LNG terminal site.

A map depicting Crown Landing's proposed LNG terminal site and Texas Eastern's proposed pipeline route is provided in appendix 1.[1]

Crown Landing is requesting approval to begin construction of the LNG facilities in August 2005 and proposes an in-service date of September 2008. Texas Eastern would begin construction of the proposed pipeline and aboveground facilities in 2006 and proposes an in-service date in the Fall of 2008.

The EIS Process

The FERC will use the EIS to consider the environmental impact that could result if it issues Crown Landing an Order Authorizing Approval of a Place of Import under section 3 of the Natural Gas Act and it issues Texas Eastern a Certificate of Public Convenience and Necessity.

This notice formally announces our preparation of the EIS and the beginning of the process referred to as ''scoping.'' We[2] are soliciting input from the public and interested agencies to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed actions.

Our independent analysis of the issues will be included in a single draft EIS prepared for both projects. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

Although no formal application for authorizing import or natural gas facilities has been filed, the FERC staff is initiating its NEPA review now. The purpose of the FERC's NEPA Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

We have held early discussions with other jurisdictional agencies to identify their issues and concerns. These agencies include the U.S. Army Corps of Engineers, U.S. Coast Guard; National Oceanic and Atmospheric Fisheries, U.S. Fish and Wildlife Service, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, Delaware Department of Natural Resources and Environmental Control, Delaware Historic Preservation Office, and Delaware River Basin Commission. By this notice, we are asking these and other Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposals. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative terminal sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before June 21, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, DG2E;
- Reference Docket Nos. PF04–2–000 and PF04–5–000 on the original and both copies.

The public scoping meetings to be held on May 5 and 6, 2004 in Chester Township, PA and Swedesboro, NJ are designed to provide another opportunity to offer comments on the proposed projects. Interested groups and individuals are encouraged to attend these meetings and to present comments on the environmental issues they believe should be addressed in the EIS. Transcripts of the meetings will be made so that your comments will be accurately recorded.

Please note that the Commission encourages electronic filing of comments. *See* 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

When Crown Landing and Texas Eastern submit their applications for authorization to construct and operate the Crown Landing LNG and Logan Lateral Projects, the Commission will publish a Notice of Application in the **Federal Register** and will establish a deadline for interested persons to

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, Room 2A or call (202) 502–8371. For instructions on connecting to eLibrary refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

intervene in the proceeding. Because the Commission's NEPA Pre-filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

Environmental Mailing List

If you wish to be taken off our environmental mailing list, please return the ''Remove from Mailing List'' Form included in appendix 2. If you do not return this form, you will remain on our mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.*, PF04–2–000 or PF04–5–000), and follow the instructions. Searches may also be done using the phrase ''Crown Landing LNG'' or ''Logan Lateral'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, Crown Landing has established an Internet Web site for its project at *http://www.bpcrownlanding.com*. The Web site includes a description of the project, maps and photographs of the proposed site, information on LNG, and links to related documents.

Magalie R. Salas,

Secretary.

[FR Doc. E4–937 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451–001]

SAF Hydroelectric, LLC; Notice of Intent To Prepare an Environmental Assessment, Notice of Paper Scoping and Soliciting Scoping Comments, and Notice of Revised Schedule for Processing Application

April 14, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* Original major license.

b. *Project No.:* 12451–001.

c. *Date Filed:* January 20, 2004.

d. *Applicant:* SAF Hydroelectric, LLC.

e. *Name of Project:* Lower St. Anthony Falls Hydroelectric Project.

f. *Location:* On the Mississippi River, in the Town of Minneapolis, Hennepin County, Minnesota. The project affects federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Douglas A. Spaulding P.E., Spaulding Consultants, 1433 Utica Avenue South, Suite 162, Minneapolis, MN 55416, (952) 544–8133 or Robert Larson, 33 South 6th Street, Minneapolis, MN 55402, (612) 343–2913.

i. *FERC Contact:* Kim Carter at (202) 502–6486, or *kim.carter@ferc.gov*.

j. *Deadline for Filing Scoping Comments:* 60 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed Lower St. Anthony Falls Hydroelectric Project would be located at the U.S. Army Corps of Engineers (Corps) Lower St. Anthony Falls Lock and Dam and would utilize 5.9 acres of Corps lands. The generation turbines would be located in an auxiliary lock chamber adjacent to the Corps' main lock chamber. An auxiliary building, storage yard, and buried transmission line would occupy additional Corps lands. The project would operate according to the Corps' current operating criteria which maintains a constant water surface elevation of approximately 750.0 mean sea level in the 33.5-acre reservoir.

The proposed project would consist of the following features: (1) 16 turbine/generator units grouped in eight 6.2-foot-wide by 12.76-foot-high steel modules having a total installed capacity of 8,980 kilowatts, each module contains 2 turbine/generator sets (two horizontal rows of 1 unit each) installed in eight stoplog slots on the auxiliary lock structure; (2) trashracks located at the turbine intake; (3) a 200-foot-long sheet pile/concrete guide wall, located between the main lock and auxiliary lock, to facilitate navigation; (4) a 1,050-foot-long, 13,800-volt buried transmission line; (3) a 21-foot by 81-foot control building to house switchgear and controls; (4) a 20-foot by 30-foot project office and storage building; and (5) appurtenant facilities.

The applicant estimates that the average annual generation would be about 57,434,000 kilowatt-hours.

m. A Scoping Document (SD) outlining the subject areas to be addressed in the EA was distributed to the parties on the Commission's mailing list. Copies of the scoping document and application are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–12451), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph (h) above.

n. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other

pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the EA and to seek additional information pertinent to this analysis. The Commission intends to prepare one Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act (NEPA). The EA will consider both site-specific and cumulative environmental effects and reasonable alternatives to the proposed action. Should substantive comments requiring re-analysis be received on the NEPA document, we would consider preparing a final NEPA document.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings near the project site. Instead, staff will conduct paper scoping.

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from participants all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the project's impacts to the aforementioned.

p. *Procedural Schedule:* The schedule for processing the Application has been revised as follows. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Scoping Document 1.	April 2004.
Request Additional Information (if needed).	July 2004.
Issue Notice of Ready for Environmental Analysis.	July/August 2004.
Issue Notice of availability of EA.	December 2004.
Public Comments on EA Due.	January 2005.
Ready for Commission decision on the application.	April 2005.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Action	Tentative date
Notice of the availability of the final EA.	April 2005.
Ready for Commission's decision on the application.	June 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E4–934 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JR02–1–000]

Puget Sound Hydro LLC; Notice Denying Late Intervention

April 20, 2004.

1. On June 12, 2003, the Commission issued a Notice of Jurisdictional Review in Docket No. JR02–1–000 and Project No. 11857, soliciting comments, protests, and motions to intervene with respect to the unlicensed, non-operational Nooksack Falls Hydroelectric Project, located on the North Fork of the Nooksack River in Whatcom County, Washington. The notice established July 14, 2003, as the deadline for filing comments, protests, and motions to intervene.

2. On March 15, 2004, American Rivers filed a motion for late intervention in Project No. 11857. On March 31, 2004, Puget Sound Hydro LLC filed an answer in opposition to the motion, which we reject as late.[1] On January 4, 2001, the Commission issued a preliminary permit to Welcome Springs for the purpose of studying the feasibility of filing a license application for the mothballed Nooksack Falls Project. The Commission denied Welcome Springs' request for a stay of the permit,[2] which therefore expired on January 3, 2004, before American Rivers' motion for late intervention. However, since the Docket No. JR02–1–000 proceeding is still pending, American Rivers' motion will be considered in that docket.

3. American Rivers states that it missed the intervention deadline of July 14, 2003, because it only became aware of the project after that date. It states that it was not on the service list for the project, and that it learned of the project through a newspaper article in the Bellingham Herald on February 16, 2004.

4. A service list names only parties to a proceeding. 18 CFR 385.2010. Thus, to be placed on the service list one must file a motion to intervene. 18 CFR 385.2010(e). A Commission notice issued on March 20, 2003, established a proceeding in Docket No. JR02–1–000 only regarding the navigability of the North Fork Nooksack River at the project site. While that notice did not invite motions to intervene, Welcome Springs and American Whitewater filed such motions, which were granted. Prior to issuance of the June 12, 2003 Notice of Jurisdictional Review,[3] there was no open proceeding in the permit docket, Project No. 11857, and therefore no service list. Nor does American Rivers' explanation that it did not learn of the project until February 16, 2004, constitute good cause. *See California Independent System Operator Corp.,* 91 FERC ¶ 61,243 at 61,876 (2000) (that movants did not learn of the intervention deadline in time to submit a timely motion to intervene does not amount to good cause under 18 CFR 385.214(d)).

5. American Rivers asserts that its interests are not adequately represented by the current parties to the proceeding. First, its statement of interests for the most part has to do with any future licensing proceeding for the project, rather than to the sole subject of the instant proceeding: Whether the project is required to be licensed under Part I of the Federal Power Act. If the Commission ultimately rules that the Noocksack Project is required to be licensed, and if a license application is subsequently filed, American Rivers will have the opportunity at that time to intervene in the licensing proceeding. Second, American Rivers' broadly stated interests in obtaining ''a balance between responsible hydropower projects and healthy rivers'' can, even though not relevant to a jurisdiction case, be expected to be well represented by the existing intervenors, which are Welcome Springs, American Whitewater, Washington State

[1] 18 CFR 385.213(d) (2004) requires an answer to a motion to be filed within 15 days; Puget Sound Hydro's answer was filed 16 days after the motion was filed.

[2] 106 FERC ¶ 61,014 (2004). No rehearing requests were filed.

[3] The June 12, 2004 notice stated (at para. j) that anyone wishing to be included on the Commission's mailing list for the proceeding should so indicate by writing to the Secretary of the Commission.

Department of Ecology, the U.S. Department of Agriculture (Forest Service), and the Nooksack Indian Tribe.

American Rivers' late motion to intervene in this proceeding is denied.

Magalie R. Salas,

Secretary.

[FR Doc. E4–923 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6514–009]

City of Marshall, Michigan; Notice Soliciting Scoping Comments

April 14, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6514–009.

c. *Date filed:* May 2, 2003.

d. *Applicant:* City of Marshall, Michigan.

e. *Name of Project:* City of Marshall Hydroelectric Project.

f. *Location:* On the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Keith Zienert, Power Plant Superintendent, City of Marshall, 906 S. Marshall, Marshall, MI 49068, (269) 781–8631; or John Fisher, Chairman, Lawson-Fisher Associates P.C., 525 West Washington Avenue, South Bend, IN 46601, (574) 234–3167.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Deadline for filing scoping comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–6514–009) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing City of Marshall Hydroelectric Project (Project) consists of: (1) The 12-foot-high, 215-foot-long Perrin No. 1 Dam; (2) the 12-foot-high, 90-foot-long Perrin No. 2 Dam; (3) a 130-acre reservoir with a normal pool elevation of 899 feet msl; (4) a 140-foot-long canal-type forebay; (5) a powerhouse containing three generating units with a total installed capacity of 463 kW; and (6) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–6514) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process*

The Commission staff intends to prepare an Environmental Assessment (EA) for the City of Marshall Hydroelectric Project (FERC No. 6514–009) in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives by issuing a Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web site at *http://www.ferc.gov* using the ''eLibrary'' link (*see* item m above).

Magalie R. Salas,

Secretary.

[FR Doc. E4–936 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–10–001]

Standards of Conduct for Transmission Providers; Notice of Technical Conference

April 19, 2004.

The Federal Energy Regulatory Commission (FERC) will hold a conference/workshop on Standards of Conduct for Transmission Providers on May 10, 2004, at the Doubletree Hotel—Allen Center, 400 Dallas Street, Houston, Texas.

The purpose of the conference is to discuss compliance, training and best practices for implementing the Standards of Conduct for Transmission Providers. The conference will be organized in two sessions. The morning session will include several panels to discuss (1) the duties and responsibilities of a Chief Compliance Officer and best practices from current Chief Compliance Officers; (2) training requirements; and (3) best practices. The afternoon session will give individuals the opportunity to break out into smaller groups to discuss subjects to be decided based on feedback from registrants. The meeting will begin at 10 a.m. and conclude at 3 p.m. All interested persons are invited to attend.

The Commission is hosting this conference to help provide guidance on implementing the Standards of Conduct. It would be helpful for interested persons to e-mail: (1) Specific questions that should be addressed at the conference; (2) ideas on subjects to cover at the conference; or (3) other suggestions to *Demetra.Anas@ferc.gov*.

Hotel rooms have been blocked at the Doubletree Hotel—Allen Center under the code ''FED'' for attending guests to reserve a one- or two-night stay. The block will be released on April 28, 2004. You can reserve a room after that date, but on a room- and rate-availability basis. Reservations for hotel rooms can be made by calling 713–759–0202.

There is no registration fee to attend this conference. However, we request that those planning to attend to register online on the Commission Web site at

http://www.ferc.gov/whats-new/registration/comp-0510-form.asp.

You are urged to watch for further notices on this conference as plans and a more precise schedule and content evolve. Questions about the conference should be directed to: Demetra Anas, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–0178.

Magalie R. Salas,

Secretary.

[FR Doc. E4–938 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–36–000 and CP04–41–000]

Weaver's Cove Energy L.L.C. and Mill River Pipeline L.L.C.; Notice of Site Visit and Technical Conference

April 19, 2004.

On Tuesday May 4, 2004, staff of the Office of Energy Projects (OEP) will conduct a visit to the site of Weaver's Cove Energy, L.L.C.'s proposed liquefied natural gas (LNG) import terminal and storage facility in Fall River, Massachusetts. This site visit will be open to the public. Anyone interested in participating should meet at the entrance to the site at One New Street at 2 p.m. on May 4, 2004. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

On Wednesday May 5, 2004, OEP will convene a cryogenic design and technical conference of the proposed LNG import terminal and storage facility in Fall River, Massachusetts. The cryogenic conference will start at 9 a.m. on May 5, 2004, at the Venus de Milo Restaurant in Swansea, Massachusetts. In view of the nature of security issues to be explored, the cryogenic conference will not be open to the public. Attendance at the conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, State and local agencies. Any person planning to attend the May 5th conference must notify the Office of General Counsel (Joseph O'Malley) at (202) 502–8035 by 12 noon on May 4, 2004, and must sign a non-disclosure statement prior to admission.

Magalie R. Salas,

Secretary.

[FR Doc. E4–933 Filed 4–26–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7654–4]

Science Advisory Board; Scientific and Technological Achievement Awards Review Panel; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing the addition of more experts to its Scientific and Technological Achievement Awards Review Panel (Panel) and is hereby soliciting nominations for additions to this Panel.

DATES: Nominations should be submitted by May 18, 2004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Ms. Kathleen White, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office, at telephone/voice mail: (202) 343–9878; or via e-mail at: *white.kathleen@epa.gov*. General information concerning the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *Background:* Background information about the SAB, the Scientific and Technological Achievement Awards Program, and the formation of this Panel was published in the **Federal Register**, 67 FR 79079–81 (December 27, 2002). At that time, the SAB solicited nominations for the full Panel which met in 2003.

The SAB would now like to add two or three experts to augment the existing Panel in the areas of control systems and technology and/or ecological research. Experience reviewing articles for peer reviewed journals and/or service as an editor of a peer reviewed journal is highly desirable. Updated information about EPA's Scientific and Technological Achievement Awards (STAA) program can be found at: *http://es.epa.gov/ncer/staa/index.html*.

Process and Deadline for Submitting Nominations: Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form should contact the DFO, indicated above.

Dated: April 19, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–9559 Filed 4–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7654–3]

Science Advisory Board Staff Office; Notification of an Upcoming Science Advisory Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public telephone conference meeting to discuss the review of two draft SAB reports.

DATES: May 18, 2004. A public telephone conference meeting of the SAB's review committee will be held from 1 p.m. to 3 p.m (Eastern Time) on May 18, 2004.

ADDRESSES: The telephone conference for these reviews will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding the telephone conference may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202) 343–9982) or e-mail at *miller.tom@epa.gov*, or Dr. Anthony Maciorowski, Associate Director for Science, U.S. EPA Science Advisory Board via phone ((202) 343–9983) or e-mail at *maciorowski.anthony@epa.gov*.

The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: (a) *Background on the Air Toxics Research Strategy Report Quality Review Committee (QRC) Meeting:* The Air Toxics Research Strategy Report QRC Telephone Conference Meeting will be held on Tuesday, May 18, 2004 from 1 p.m. until 2 p.m. The purpose of the meeting will be to allow the members of the QRC to conduct a public review and discussion of the report.

The focus of the discussion will be on whether: (i) The original charge questions to the review panel have been adequately addressed, (ii) there are any technical errors or omissions in the report or issues that are inadequately dealt with in the report, (iii) the report is clear and logical, and (iv) any conclusions drawn, or recommendations provided, are supported by the body of information in the review report. The outcome of the QRC review will be one of the following: (i) Recommend SAB approval of the report, (ii) return the report to the review panel for further work, (iii) reject the work of the review panel and request a reconsideration and a revised report in the future, or (iv) recommend that the SAB constitute an entirely new review panel.

(b) *Background on the Environmental Economics Research Strategy Report QRC Meeting:* The Environmental Economics Research Strategy Report QRC Telephone Conference Meeting will be held on Tuesday, May 18, 2004 from 2 p.m. until 3 p.m. The purpose of the meeting will be to allow the members of the QRC to conduct a public review and discussion of the report. The focus of the discussion and the possible outcomes are the same as described in section (a), above.

Availability of Review Material for the Board Meeting: Documents that are the subject of this meeting are available on the SAB Web site at: *http://www.epa.gov/sab/.*

Procedures for Providing Public Comment: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at SAB meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a telephone conference call meeting will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO noted above in writing via e-mail at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should provide an electronic copy of their comments for distribution to interested parties and participants in the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration.

Comments should be supplied to the DFO at the address/contact information above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format)).

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 19, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–9560 Filed 4–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7654–2]

Science Advisory Board Staff Office; New Contact Information for the EPA Science Advisory Board Staff Office; Update on a Previously Announced Meeting of the SAB Drinking Water Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office has moved to a new location with a new mailing address, telephone and facsimile numbers, listed below. These changes are effective immediately. The SAB Staff Office announces updates to the public face-to-face meeting of the SAB Drinking Water Commitee (DWC) to review the Agency's Drinking Water Research Program Multi-Year Plan.

SUPPLEMENTARY INFORMATION:

1. New SAB Staff Office Addresses, Telephone and Facsimile Numbers

U.S. Postal Mailing Address: U.S. EPA Science Advisory Board, Mail Code 1400F, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Express/FedEx/Courier Delivery Address: U.S. EPA Science Advisory Board, Woodies Building, 1025 F Street, NW., Suite 3600, Washington, DC 20004.

Phone Numbers: Main Office (202) 343–9999; facsimile (202) 233–0643.

2. SAB DWC Face-to-Face Meeting Updates

Background: Information on this review previously appeared in 69 FR 13829 (March 24, 2004). This update provides: (a) A deadline for requesting an opportunity to be placed on the public speaker list for the DWC meeting, and (b) contact information for the new Designated Federal Officer (DFO) responsible for the SAB.

(a) *Date:* May 17, 2004. Interested parties should contact the DFO in writing via e-mail, fax, or letter no later than noon, eastern daylight time on May 17, 2004, to be placed on the public speaker list.

(b) *New DFO Contact:* Any member of the public wishing further information regarding the SAB DWC may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202–343–9977) or e-mail at *shallal.suhair@epa.gov,* or at the new addresses provided above.

Dated: April 19, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–9562 Filed 4–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0091]; FRL–7357–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing

exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 19, 2004 to April 8, 2004, consists of the PMNs and TMEs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0091 and the specific PMN number or TME number, must be received on or before May 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0091. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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, which 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. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic 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.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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.

C. 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 docket ID number and specific PMN number or TME 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0091. 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 e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0091 and PMN Number or TME Number. 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.C.2. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0091 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as 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). Information so marked will not be disclosed 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 public docket and EPA's electronic public docket. 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 docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 19, 2004 to April 8, 2004, consists of the PMNs and TMEs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 03/19/04 TO 04/08/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0457	03/19/04	06/16/04	CBI	(G) Viscosity index and low temperature fluidity improver	(G) Alkyl methacrylate copolymer

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 03/19/04 TO 04/08/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0458	03/23/04	06/20/04	CBI	(G) Additive, open, non-dispersive use	(G) Salt of acidic and basic polymers
P–04–0459	03/23/04	06/20/04	CBI	(G) Paper additive	(G) Polymeric carboxylic acid salt
P–04–0460	03/23/04	06/20/04	CBI	(G) Paper additive	(G) Polymeric carboxylic acid salt
P–04–0461	03/24/04	06/21/04	International Paint, Inc.	(G) Coating component	(G) Polyamine-epoxy adduct
P–04–0462	03/24/04	06/21/04	Ashland Inc., Environmental Health and Safety	(G) Roofing adhesive for bonding roof membranes (such as pvc, tpo) to subtrates (such as insulation boards or concrete surfaces)	(G) Polyurethane prepolymer
P–04–0463	03/24/04	06/21/04	Wsp Chemicals and Technology LLC	(S) Oil-field down hole applications	(S) 2-propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, homopolymer, Compound with 1-bromohexadecane*
P–04–0464	03/24/04	06/21/04	CBI	(S) Used as a viscosity modifier/flow enhancer for crude oil; used in boiler fuels as a burn promoter and for fuel value	(G) 2-propenoic acid, dimers and compounds
P–04–0465	03/24/04	06/21/04	Optima Chemical Group, LLC	(G) Enhances fiber	(S) 1,3-benzenedimethanamine, n,n′-[1,3-phenylenebis[(1-methylethyliden-e)iminocarbonyloxy]]bis[2,4-dichloro-n-[(2,4-dichlorophenyl)methyl]-*
P–04–0466	03/25/04	06/22/04	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer
P–04–0467	03/25/04	06/22/04	CBI	(S) Retention agent in paper and paperboard production	(G) Alkanedioic acid, polymer with amino-alkanes
P–04–0468	03/25/04	06/22/04	CBI	(G) Additive, open, non-dispersive use	(G) Salt of acidic and basic polymers
P–04–0469	03/26/04	06/23/04	CBI	(G) Asphalt additive	(G) Aliphatic n-substituted carboxylic acid amid
P–04–0470	03/26/04	06/23/04	CBI	(G) Radiation cured coatings, inks and adhesives.	(G) Acrylate esters
P–04–0471	03/26/04	06/23/04	CBI	(G) Polymer for waterborne paints	(G) Modified polyester resin
P–04–0472	03/26/04	06/23/04	CBI	(G) Polymer for water-borne paints	(G) Modified polyester resin
P–04–0473	03/29/04	06/26/04	CBI	(S) Floculating agent, textile finishings and paper production	(G) Quaternary ammonium compound
P–04–0474	03/29/04	06/26/04	CBI	(G) Intermediate for lubrication detergents	(G) Alkylbenzene sulfonic acid
P–04–0475	03/30/04	06/27/04	CBI	(G) Additive for lubricants	(G) Alkyl methacrylate copolymer
P–04–0476	03/29/04	06/26/04	The Lubrizol Corporation	(G) Lubricant additive	(G) Alkylbenzene sulfonic acids, metal salts
P–04–0477	03/29/04	06/26/04	The Lubrizol Corporation	(G) Lubricant additive	(G) Alkylbenzene sulfonic acids, metal salt
P–04–0478	03/29/04	06/26/04	The Lubrizol Corporation	(G) Lubricant additive	(G) Alkylbenzene sulfonic acids, metal salt
P–04–0479	03/31/04	06/28/04	CBI	(G) Cleaning agent	(G) Mixture containing alcohols, aminoalcohols and their sodium salts
P–04–0480	03/30/04	06/27/04	The Dow Chemical Company	(S) Brominated epoxy resin additive	(G) Brominated epoxy resin additive
P–04–0481	03/30/04	06/27/04	The Dow Chemical Company	(S) Brominated epoxy resin additive	(G) Brominated epoxy resin additive
P–04–0482	04/05/04	07/03/04	Degussa Corporation	(S) Crosslinking agent for systems used in the textile industry	(G) Alkanediol/alkane oxime/alkane amine blocked cyclo aliphatic isocyanate, compounds with aliphatic acid
P–04–0483	04/05/04	07/03/04	Wacker Polymer Systems	(S) Superplasticizer for self-leveling flooring compounds and screeds	(G) Functionalized poly(meth)acrylic acid
P–04–0484	04/05/04	07/03/04	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin
P–04–0485	04/05/04	07/03/04	CBI	(S) Resin for automotive coatings	(G) Acrylic polymer
P–04–0486	04/05/04	07/03/04	CBI	(S) Resin for automotive coatings	(G) Acrylic polymer
P–04–0487	04/05/04	07/03/04	CBI	(S) Resin for automotive coatings	(G) Acrylic polymer
P–04–0488	04/05/04	07/03/04	CBI	(S) Resin for automotive coatings	(G) Acrylic polymer
P–04–0489	04/05/04	07/03/04	CBI	(S) Resin for automotive coatings	(G) Acrylic polymer
P–04–0490	04/05/04	07/03/04	CBI	(S) Resin for automotive coatings	(G) Acrylic polymer

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 03/19/04 TO 04/08/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0491	04/06/04	07/04/04	Cook Composites and Polymers Co.	(S) Resin for fiberglass reinforced laminates	(G) 1,3-isobenzofurandione, polymer with 2,5-furandione, oxybis[propanol] and 1,2-propanediol, 1(or 2)-(2-methoxymethylethoxy)-alkyl ester
P–04–0492	04/05/04	07/03/04	CBI	(G) Byproduct	(G) Acetic acid derivative
P–04–0493	04/06/04	07/04/04	Grain Processing Corporation	(G) Fluid loss control	(G) Carboxymethyl cornhulls
P–04–0494	04/05/04	07/03/04	CBI	(G) Pulp fiber treatment	(S) Endo-1,4-.beta.-xylanase
P–04–0495	04/07/04	07/05/04	CBI	(G) Dyestuff	(G) Direct black azo dye
P–04–0496	04/07/04	07/05/04	CBI	(G) Dyestuff	(G) Substituted phthalocyanine dye
P–04–0497	04/07/04	07/05/04	CBI	(G) Open, non-dispersive (resin)	(G) Silane-terminated polyurethane prepolymer resin
P–04–0498	04/07/04	07/05/04	CBI	(G) Dyestuff	(G) Direct black azo dye
P–04–0499	04/07/04	07/05/04	CBI	(G) Dyestuff	(G) Direct yellow azo dye
P–04–0500	04/06/04	07/04/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0501	04/06/04	07/04/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0502	04/06/04	07/04/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0503	04/06/04	07/04/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0504	04/06/04	07/04/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0505	04/06/04	07/04/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifuctional acrylate oligomer resin
P–04–0506	04/07/04	07/05/04	CBI	(G) Grease thickener	(G) Polyurea thickener
P–04–0507	04/07/04	07/05/04	CBI	(G) Dyestuff	(G) Acid red quinone dye
P–04–0508	04/07/04	07/05/04	Lg Chemical of America, Inc.	(S) Plasticizer for use in products manufactured from polyvinyl chloride (pvc)	(S) Hexanoic acid, 2-ethyl-, mixed triesters with benzoic acid and trimethylolpropane
P–04–0509	04/07/04	07/05/04	Lg Chemical of America, Inc.	(S) Plasticizer for use in products manufactured from polyvinyl chloride (pvc)	(S) Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and neopentyl glycol
P–04–0510	04/07/04	07/05/04	Lg Chemical of America, Inc.	(S) Plasticizer for use in products manufactured from polyvinyl chloride (pvc)	(S) Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and diethylene glycol

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 03/19/04 TO 04/08/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–04–0004	04/06/04	05/20/04	Ethox Chemicals, LLC	(G) Cleaning fluid	(S) Hexanoic acid, 2-ethyl-, C_{8-12}-alkyl esters

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 43 NOTICES OF COMMENCEMENT FROM: 03/19/04 TO 04/08/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0002	03/24/04	09/23/03	(G) Trichoderma reesei
P–00–0394	03/30/04	03/19/04	(G) Acrylic emulsion polymer
P–01–0466	04/05/04	03/20/04	(G) Organic transition metal complex
P–01–0944	03/19/04	03/08/04	(G) Benzenesulfonic acid derivative, salt
P–02–0802	03/30/04	03/25/04	(G) Styrene acrylic emulsion polymer
P–02–0891	03/23/04	03/17/04	(S) Phosphonium, triphenyl(phenylmethyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-nu-methyl-1-butanesulfonamide (1:1)
P–03–0103	03/29/04	03/08/04	(G) Pentaerythritol and dipentaerythritol mixed esters of branched and linear fatty acids
P–03–0305	03/24/04	02/24/04	(G) 2-naphthalesulfonic acid, acetylamino phenyl azo, sulfo-1-naphthalenyl azo, diamino-5-sulfopheny azo, acid
P–03–0330	03/25/04	01/30/04	(G) Polyurethane prepolymer, polyurethane adhesive
P–03–0348	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0349	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0350	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0351	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0352	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0353	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0461	04/02/04	03/03/04	(G) Fatty acid reaction products with alkanolamine
P–03–0472	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0473	03/30/04	03/10/04	(G) Condensation polymer of anhydride and polyol.
P–03–0744	03/31/04	03/13/04	(G) Modified ethylene/acrylate polymer
P–03–0781	03/25/04	03/03/04	(G) Allyl ethoxylate methacrylate
P–03–0784	03/25/04	03/03/04	(G) Linear silicone methacrylate
P–03–0792	04/06/04	03/17/04	(S) Cyclododecane, oxidized, by-products from, acidified, oil phase
P–03–0859	03/30/04	02/24/04	(G) Benzothiadiazine derivative
P–03–0867	03/26/04	03/02/04	(G) Silicone quaternary salt
P–03–0869	04/06/04	03/17/04	(S) Cyclododecane, oxidized, by-products from, acidified, oil phase, ethoxylated
P–04–0007	03/30/04	03/23/04	(G) Modified saponified tall oil distillates
P–04–0013	04/07/04	03/04/04	(G) Aromatic - aliphatic polyamides
P–04–0038	03/29/04	03/10/04	(G) Acrylic polymer
P–04–0040	03/26/04	02/27/04	(G) Polyethylene glycol benzyl alkyl ether
P–04–0041	03/30/04	03/23/04	(G) Polymeric amine
P–04–0102	03/23/04	02/25/04	(G) Aqueous ketone-aldehyde resin
P–04–0105	03/24/04	03/13/04	(G) Alkyl oxirane - epichlorohydrin - alkyl bis(phenol) - polyhydroxy polyol
P–04–0110	04/05/04	03/19/04	(S) Linseed oil, conjugated
P–04–0121	03/25/04	03/08/04	(G) Polyurethane
P–04–0127	04/05/04	03/26/04	(G) Polyether/allylphenol modified siloxane
P–04–0134	04/02/04	03/25/04	(G) Reaction products of substituted amino anthracenesulfonic acid and substituted triazine amino phenyl compound
P–04–0138	03/19/04	03/08/04	(G) Substituted acrylate polymer
P–04–0146	03/25/04	02/27/04	(S) Potassium zinc fluoride
P–04–0148	04/02/04	03/05/04	(G) Olefin - maleic anhydride esterified polymer
P–04–0154	03/22/04	03/04/04	(G) 2-propenoic acid, 2-methyl-, polymer with 2-hydroxypropyl 2-propenoate, 2-propenenitrile, alkyl 2-methyl-2-propenoate and 1-propene,homopolymer, chlorinated
P–04–0172	04/05/04	03/31/04	(G) Organo-manganese complex
P–94–1904	03/30/04	03/22/04	(G) Aqueous acrylic polymer
P–94–1929	03/30/04	02/25/04	(G) Polyamideimide resin

List of Subjects

Enviromental protection, Chemicals, Premanufacturer notices.

Dated: April 20, 2004.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–9563 Filed 4–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7654–1; HQ–2004–6001]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Advance Auto Parts, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with Advance Auto Parts, Inc. (''Advance'') to resolve violations of the Clean Water Act (''CWA''), the Emergency Planning and Community Right-to-Know Act (''EPCRA''), and the Resource Conservation and Recovery Act (''RCRA'') and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested persons to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

Advance failed to prepare Spill Prevention Control and Countermeasure (''SPCC'') plans for four facilities where

they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. Advance failed to comply with various hazardous waste management, universal waste management, and underground storage tank requirements at eight facilities, as further described below. EPA, as authorized by RCRA section 3008, 42 U.S.C. 6928, has assessed a civil penalty for these violations. Advance failed to file an emergency planning notification with the State Emergency Response Commission (''SERC'') and to provide the name of an emergency contact to the Local Emergency Planning Committee (''LEPC''). At seven facilities, Advance failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

DATES: Comments are due on or before May 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in section 1.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Special Litigation and Projects Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@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 No. OECA–2004–0025. The official public docket consists of the Consent Agreement, proposed Final Order, and any public comments received. 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 Enforcement and Compliance Docket Information Center (ECDIC) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1752. A reasonable fee may be charged by EPA for copying docket materials.

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, which 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. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic 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 section 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, 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. Once in the

system, select ''search,'' and then key in Docket ID No. OECA–2004–0025. 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 *docket.oeca@epa.gov*, Attention Docket ID No. OECA–2004–0025. 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 section I.A.1. 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: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OECA–2004–0025.

3. *By Hand Delivery or Courier.* Deliver your comments to the address provided in section I.A.1., Attention Docket ID No. OECA–2004–0025. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as 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). Information so marked will not be disclosed 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 public docket and EPA's electronic public docket. 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 docket and EPA's electronic public docket 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.

I. Background

Advance Auto Parts, Inc. operates a distribution business whereby auto parts are purchased, stored, distributed, and sold through approximately 2400 retail stores. Advance, incorporated in the State of Delaware and located at 5673 Airport Road, Roanoke, Virginia 24012, disclosed, pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for four facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. Advance disclosed that at seven facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA section 302, 42 U.S.C. 11002. Advance disclosed that at seven facilities they had failed to submit an Emergency and Hazardous Chemical Inventory for to the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022.

Pursuant to 40 CFR part 22.45(b)(2)(iii), the following is a list of facilities at which Advance self-disclosed violations of CWA section 311(b)(3): Thomson Distribution Center, 1520 I–20 Industrial Park Drive, Thomson, Georgia 30824; Lakeland Distribution Center, 4900 South Frontage Road, Lakeland, Florida 33815; Gadsden Distribution Center, 4330 Brooke Avenue, Gadsden, Alabama 35904; Hazelhurst Distribution Center, 19001 Highway 51, Hazelhurst, Mississippi 39083.

Advance self-disclosed violations of EPCRA sections 302 and/or sections 312 at the following facilities: Salinas Distribution Center, 3633 9th Street, Salina, Kansas 67401; Thomson Distribution Center, 1520 I–20 Industrial Park Drive, Thomson, Georgia 30824; Gadsden Distribution Center, 4330 Brooke Avenue, Gadsden, Alabama 35904; Roanoke Distribution Center, 1835 Blue Hills Drive, Roanoke, Virginia 24038; Lakeland Distribution Center, 4900 South Frontage Road, Lakeland, Florida 33815; Gastonia Distribution Center, 1900 Jenkins Dairy Road, Gastonia, North Carolina 28052; Hazelhurst Distribution Center, 19001 Highway 51, Hazelhurst, Mississippi 39083.

In addition, Advance disclosed violations of RCRA and related State regulations related to the management of hazardous waste, universal waste, and underground storage tanks at the following eight facilities: Delaware Distribution Center, 1675 U.S. 42 South, Delaware, Ohio 53015; Gadsden Distribution Center, 4330 Brooke Avenue, Gadsden, Alabama 35904; Gastonia Distribution Center, 1900 Jenkins Dairy Road, Gastonia, North Carolina 28052; Hazelhurst Distribution Center, 19001 Highway 51, Hazelhurst, Mississippi 39083; Lakeland Distribution Center, 4900 South Frontage Road, Lakeland, Florida 33815; Roanoke Distribution Center, 1835 Blue Hills Drive, Roanoke, Virginia 24038; Salina Distribution Center, 3633 9th Street, Salina, Kansas 67401; and Thomson Distribution Center, 1520 I–20 Industrial Park Drive, Thomson, Georgia 30824.

Advance reported failure to properly train employees who handle universal waste at the Hazelhurst, Gastonia, Roanoke, Lakeland, Salina, Gadsden, and Delaware Distribution Centers as required by 40 CFR 273.16 and related State regulations as follows: MS Reg HW–1–273, 15A NAC 13A. 0119(b), 9VAC20–60–273, FAC 62–730.185, K.A.R. 28–31–15, AL Reg 335–14–11–0.02(7), and OAC rule 3724–52–34(D)(5)(c). Advance disclosed failure to properly label universal waste containers at the Roanoke, Gadsden, Gastonia, Delaware, Hazelhurst, and Lakeland Distribution Centers in violation of 40 CFR 273.14 and 40 CFR 273.15 and related State regulations as follows: OAC Rule 3745–273.14(E) and OAC Rule 3745–273.15, MS Reg HW–1–273, FAC 62–730.185 and FAC 62–730.185, 9VAC–20–60–273, AL Reg 335–14–11–0.02(6)(c) and AL Reg 335–14–11–0.02(5)(e), and 15A NAC 13A. 0119. Advance reported the accumulation of universal waste for a period longer than one year at the Lakeland Distribution Center in violation of 40 CFR 273.15 and related State regulation FAC 62–730.185. Advance reported the improper disposal of universal wastes at the Gadsden, Delaware, Roanoke, Gastonia, Salina, and Hazelhurst Distribution Centers as required by 40 CFR 273.11(a) and related State regulations as follows: AL Reg 335–14–11–0.02(2), OAC Rule

3745–273.11(A), 9VAC20–60–273, 15A NAC 13A. 0119(b), K.A.R. 28–31–15, and MS Reg HW–1–273.

Advance disclosed the failure to properly label hazardous waste containers at the Gadsden, Delaware, Gastonia, and Roanoke Distribution Centers as required by 40 CFR 262.34(a)(2) and 40 CFR 262.34(a)(3) and related State regulations AL Reg 335–14–3–0.03(a)(3), OAC Rule 3745–52–44, 15A NAC 13A.0107(c), and 9VAC20–60–262. Advance disclosed failure to provide training to employees handling hazardous wastes at the Gastonia, Hazelhurst, Roanoke, and Delaware Distribution Centers as required by 40 CFR 262.34(d)(5)(iii) and related State regulations 15A NAC 13A.0107(c), 9VAC20–60–262, MS Reg HW–1–262, OAC Rule 3745–65–16, AL Reg 335–14–3–.03(5)(d)(5)(iii).

Advance disclosed that they had failed to implement emergency preparedness and prevention measures at the Delaware and Roanoke Distribution facilities, as required by 40 CFR 262.34(d)(4), 40 CFR 265.30–265.35, and 40 CFR 265.37 and related state regulations OAC Rule 3745–66–71 and 9VAC20–60–262 and 9VAC20–60–265.

Advance disclosed the failure to keep manifests for three years in violation of 40 CFR 262.40(a) and related State regulations MS REG HW–1–262, AL Reg 335–14–3–0.04(1)(a), and FAC 62–730.160 at the Hazelhurst, Gadsden, and Lakeland Distribution Centers. Advance reported a failure to use manifests for hazardous wastes and failure to keep records of hazardous waste activity at the Roanoke Distribution Center, in violation of 40 CFR 262.20 and 262.42(b) and related State regulation 9VAC20–60–262. Advance disclosed a failure to post emergency information next to the phone at the Delaware, Gastonia, Hazelhurst, Roanoke, and Gadsden Distribution Centers as required by 40 CFR 262.34(d)(5)(ii) and related State regulations OAC Rule 3745–65–56, 15A NAC 13A.0107(c), MS Reg HW–1–262, 9VAC20–60–262, and AL Reg 335–14–3–0.03(5)(d)(5)(ii).

Advance disclosed failure to conduct weekly inspections of hazardous waste storage areas at the Hazelhurst, Gastonia, and Roanoke Distribution Centers, in violation of 40 CFR 22.34(d)(2) and 40 CFR 265.174 and related State regulations MS Reg HW–1–262, 15A NAC 13A.0107(c) and (j), and 9VAC20–60–265. Advance reported the failure to properly store hazardous wastes at the Roanoke Distribution Center as required by 40 CFR 262.34(d)(2) and 40 CFR 265.177, 40 CFR 265.174, 40 CFR 265.173, 40 CFR 265.171, and related State requirement 9VAC20–60–265.

Advance reported the failure to obtain an EPA identification number for the Gadsden, Delaware, Roanoke, and Gastonia Distribution Centers, in violation of 40 CFR 262.12(a) and (b) and 40 CFR 265.11 and related State regulations AL Reg335–14–3–0.01(3)(a), OAC Rule 3745–52–12, 9VAC20–60–328, and 15A NAC 13A.0107(a).

Advance reported the failure to make a hazardous waste determination at the Delaware, Roanoke, Thomson, and Salina Distribution Centers, in violation of 40 CFR 262.11, 40 CFR 261.3, 40 CFR 261.4(b), and 40 CFR 261.21–261.24, and related State regulations OAC Rule 3645–52–11, 9VAC20–60–261 and 262, GA DEP Rule 391–3–11–.07, and K.A.R. 28–31–4(b).

Finally, Advance reported that at the Gastonia Distribution Center they had failed to meet underground storage tank standards and be upgraded or closed by December 22, 1998, as required by 40 CFR 280.10(c) and 40 CFR 280.21(a) through 40 CFR 280.21(d) and 15A NAC 2N.0303.

EPA determined that Advance met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty ($893,858) and proposes a settlement penalty amount of twenty thousand, six hundred and nineteen dollars ($20,619). This is the amount of the economic benefit gained by Advance, attributable to their delayed compliance with the SPCC, RCRA and EPCRA regulations. Advance Auto Parts, Inc. has agreed to pay this amount. EPA and Advance negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on March 31, 2004 (*In Re: Advance Auto Parts, Inc.*, Docket No. HQ–2004–6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311 (b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311 (j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008a, 42 U.S.C. 6928, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated or is in violation of any requirement of the Act. Proceedings under RCRA section 3008a are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is May 27, 2004. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: April 14, 2004.

Robert A. Kaplan,

Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–9561 Filed 4–26–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 14, 2004.

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 May 27, 2004. 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 Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0320.

Title: Section 73.1350, Transmission System Operation.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions.

Number of Respondents: 411.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 206 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact.

Needs and Uses: 47 CFR section 73.1350(g) requires licensees to submit a notification to the FCC in Washington, DC whenever a transmission system control point is established at a location other than at the main studio or transmitter within 3 days of the initial use of that point. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation. FCC staff use the data to maintain complete operating information regarding licensees to be used in the event that FCC field staff needs to contact the station about interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9506 Filed 4–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 14, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) 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 Paperwork Reduction (PRA) comments should be submitted on or before May 27, 2004. 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 Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0741.

Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98, Second Report and Order and Memorandum Opinion and Order; Second Order on Reconsideration; CC Docket No. 99–273, First Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,000.

Estimated Time per Response: 115 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 228,030 hours.

Total Annual Cost: $60,000.

Needs and Uses: In the First Report and Order issued in CC Docket No. 99–273, the Commission adopts several of its tentative conclusions. The Commission concludes that local exchange carriers (LECs) must provide competing directory assistance (DA) providers that qualify under Section 251 with nondiscriminatory access to the LEC's local directory assistance databases, and must do so at nondiscriminatory and reasonable rates. The Commission determined that LECs are not required to grant competing DA providers nondiscriminatory access to non-local directory assistance databases.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9507 Filed 4–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 14, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), 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 Paperwork Reduction Act (PRA) comments should be submitted on or before May 27, 2004. 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 regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0807.

Title: Section 51.803 and Supplemental Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 52.

Estimated Time Per Response: 20–40 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 2,040 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission. *See* 47 U.S.C. 252(e)(5) and 47 CFR section 51.803. In a Public Notice, the Commission set out procedures for filing petitions for preemption pursuant to section 252(e)(5). All the information will be used to ensure that petitioners have complied with their obligations under the Communications Act of 1934, as amended. The Commission is submitting this information collection to the OMB for a three year clearance (no change to reporting or third party disclosure requirements).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9508 Filed 4–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), 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 Paperwork Reduction Act (PRA) comments should be submitted on or before May 27, 2004. 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 regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Schools and Libraries Universal Service Support Mechanism—Notification of Equipment Transfers.

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 600.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission addressed several matters related to the administration of the schools and libraries universal service mechanism (also known as the e-rate program). What makes this collection relevant is in the event that a recipient is permanently or temporarily closed and equipment is transferred, the transferring entity must notify the Administrator of the transfer, and both the transferring and receiving entities must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years.

OMB Control No.: 3060–XXXX.

Title: Global Mobile Personal Communications by Satellite (GMPCS) Authorization, Marketing and Importation Rules.

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 19.

Estimated Time Per Response: 24 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 483 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission adopted and released a Second Report

and Order, in IB Docket No. 99–67, FCC 03–283. The Commission adopted a rule that will require interested parties to obtain equipment authorization pursuant to the certification procedure in Part 2 of the Commission's rules. In the Order, the Commission adopted rules and policies pertaining to portable GMPCS transceivers, which include satellite telephones and other portable transceivers operated by end users for communication via direct links with satellites. GMPCS devices are used for both voice and data communication and may be used for internet access and other modes of broadband communication. The Commission also adopted rules pertaining to test-based equipment authorization, importation either for commercial purposes or personal use, responsibility for unauthorized operation, and out-of-band emissions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9509 Filed 4–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2656]

Petitions for Reconsideration of Action in Rulemaking Proceedings

April 15, 2004.

Note: *See* Erratum to Report No. 2656.

Petitions for reconsideration have been filed in the Commission's rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by May 12, 2004. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands (WT Docket No. 02–146).

Number of Petitions Filed: 1.

Subject: In the Matter of Table of Allotments FM Broadcast Stations (Hart, Pentwater, and Coopersville, Michigan) (MB Docket No. 02–335, RM–10545).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9503 Filed 4–26–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, May 3, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, April 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–9664 Filed 4–23–04; 3:41 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Complex Humanitarian Emergency and War-related Injury Public Health and Information Management Program

Announcement Type: New.

Funding Opportunity Number: 04124.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Application Deadline: June 28, 2004.

I. Funding Opportunity Description

Authority: 42 U.S.C. Section 241 & 247b, as amended.

Purpose: The purpose of the program is to build the epidemiologic and information capacity of leading non-governmental organizations, and to improve the data available for decision making in the field of Complex Humanitarian Emergencies (CHEs). This program addresses the ''Healthy People 2010'' focus areas of Injury and Violence Prevention and Environmental Health.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the understanding of the relationship between environmental exposures and health effects.

Activities

Awardee activities for this program are as follows:

- Use the public health model to evaluate the impact of conflict on health in war-affected countries.
- Estimate the prevalence of injury, disability and mental health problems attributable to conflict.
- Build the capacity of, and establish guidelines in, health information management in emergencies.
- Provide public health assistance in emergent conflict settings.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance in evaluation of the impact of conflict on civilian populations.
- Collaborate on the dissemination of lessons learned from the program.
- Provide instructors for training courses and other capacity building programs.
- Provide technical assistance and guidance for designing, implementing and maintaining data systems for health information.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $400,000.

Approximate Number of Awards: 3–5.

Approximate Average Award: $75,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: $20,000.

Ceiling of Award Range: None.

Anticipated Award Date: August 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by organizations, other than United Nations and governmental organizations, with a proven track record of applying public health principles to war-related injuries, information management, and health assessment in complex humanitarian emergencies and conflict settings. Applicants must have experience conducting health or landmine/unexploded ordnance assessments in post-conflict and conflict settings.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

This announcement is for submission of proposals that are not research. If your application contains research, it will be considered non-responsive to the announcement.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If there are discrepancies between the application form instructions and the program announcement, adhere to the guidance in the program announcement.

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- *Maximum number of pages:* 10. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- *Font size:* 12 point unreduced
- *Paper size:* 8.5 by 11 inches
- *Page margin size:* One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project plan
- Understanding of topic
- Staff
- Timeline
- Evaluation plan
- Budget justification (not counted in page limit)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes
- Organizational Charts
- Letters of Support

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: June 28, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget are as follows: Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives,

however, prior approval by CDC officials must be requested in writing.

The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/ authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/ funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04034, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

- Project plan (30 points)

Will the project plan meet the objectives of this cooperative agreement?

- Understanding of topic (20 points)

Is the applicant's understanding of the program sufficient for implementation?

- Staff (20 points)

Does the applicant's staff have sufficient experience and skill for the program?

- Timeline (15 points)

Is the timeline appropriate for the scope of proposed activities?

- Evaluation plan (15 points)

Is the proposed evaluation protocol for the proposed activities sufficient?

- Budget justification (not counted in page limit)

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCEH. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate your application according to the criteria listed in the ''V.1. Criteria'' section above.

V.3. Anticipated Announcement Award Date

August 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/ funding/ARs.htm*.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical

Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Michael Gerber, Project Officer, 4770 Buford Hwy NE, Mailstop F–48, Atlanta, Georgia 30341, Telephone: 770–488–3520, E-mail: *mcg9@cdc.gov*.

For financial, grants management, and budget assistance, contact: Steward Nichols, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2788, E-mail: *shn8@cdc.gov*.

Dated: April 20, 2004.

William P. Nichols,

MPA, Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9495 Filed 4–26–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Development of Influenza Surveillance Networks

Announcement Type: New.

Funding Opportunity Number: 04106.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: May 27, 2004.

Application Deadline: June 28, 2004.

Executive Summary: An influenza pandemic has greater potential than any other naturally occurring infectious disease event to cause large and rapid global and domestic increases in deaths and serious illnesses. Preparedness is the key to substantially reducing the health, social, and economic impacts of an influenza pandemic and other public health emergencies. One component of preparedness involves understanding the impact that annual epidemics of influenza has on the population. These data regarding impact are critical to the development of prevention and control measures such as vaccination policies. Vaccination efforts are the cornerstone of influenza prevention and will be the primary means of mitigating the impact of an influenza pandemic.

The systematic collection of influenza surveillance data over time is necessary to monitor and track influenza virus and disease activity and is essential to understanding the impact influenza has on a country's population. Improving surveillance systems by developing influenza surveillance networks is critical for the rapid detection of new variants, including those with pandemic potential, to contribute to the global surveillance system. Global collaboration, under the coordination of the World Health Organization (WHO), is a key feature of influenza surveillance. WHO established an international laboratory-based surveillance network for influenza in 1948. The network currently consists of 112 National Influenza Center (NIC) laboratories in 83 countries, and four WHO Collaborating Centers for Reference and Research of Influenza (including one located at the Centers for Disease Control and Prevention). The primary purposes of the WHO network are to detect the emergence and spread of new antigenic variants of influenza, to use this information to update the formulation of influenza vaccine, and to provide as much warning as possible about the next pandemic. This system provides the foundation of worldwide influenza prevention and control.

Monitoring of influenza viruses and providing contributions to the global surveillance system, will assure that data used in annual WHO vaccine recommendations are relevant to each country that participates. Increased participation in the global surveillance system for influenza viruses will enhance each country's ability to monitor severe respiratory illness, to develop vaccine policy and to help build global and regional strategies for the prevention and control of influenza. Monitoring influenza disease activity is important to facilitate resource planning, communication, intervention, and investigation.

This announcement seeks to support foreign governments through their Ministries of Health or other responsible Ministries for human health in the development or improvement of epidemiologic and virologic influenza surveillance networks. These networks will focus on the systematic collection of virological and epidemiological information for influenza. This support is meant to enhance, and not to supplant, current influenza surveillance activities and proposals should build upon infrastructure already in place. Preference will be given to countries where resources are currently limited and influenza surveillance is not well established due to lack of resources.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 307 of the Public Health Service Act, [42 U.S.C. sections 241(a), and 2421], as amended.

Purpose: The purpose of the program is to provide support and assistance to foreign governments for the development or improvement of influenza surveillance networks. These networks will focus on the systematic collection of virological and epidemiological information for influenza. Countries applying for support must have an active WHO National Influenza Center recognized by WHO. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious diseases.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases: Protect Americans from infectious diseases.

The objectives of this program are to (1) Establish or enhance an active influenza surveillance network that uses standardized data collection instruments, operational definitions, and laboratory diagnostic tests to enhance surveillance for influenza at three or more sites within the country; (2) use the experience gained to expand the surveillance system to include additional sites; (3) improve local laboratory diagnostic capabilities by supporting and enhancing those local laboratories that participate in influenza surveillance; (4) develop educational and training opportunities for local public health practitioners as part of broader efforts to improve public health infrastructure in the region; and (5) improve communications and data exchange between laboratories and epidemiologists in the global influenza surveillance network by expanding the network and improving the reporting of data from surveillance sites, laboratories, and National Influenza Centers.

Activities: Awardee activities for this program are as follows:

- Develop a nationwide system to collect virologic and epidemiologic data for influenza by establishing 5 or more sites with good geographic distribution throughout the country. Each site will consist of a local laboratory and one or more clinics or hospitals for data collection. Each site should:
  - Conduct virologic and epidemiologic surveillance for influenza by collecting information year round in countries or regions of countries with tropical and subtropical climates; and/or by collecting surveillance information during the period of respiratory illness circulation in countries or regions of countries with temperate climates.
  - Have laboratory capacity for performing influenza virus isolation and typing.

○ Collect information on influenza like illnesses and/or severe respiratory disease at each site by building on information that is already available. Possible sources of information are (1) recording influenza-like-illness visits to physicians or primary care clinics or hospitals based on a standard case definition. (2) Monitoring hospital admissions for severe respiratory illness and pneumonia based on a case definition. Patient information such as age, patient history and other relevant information should be collected.

○ Collect a subset of at least 10 (and preferably up to 25) specimens from the patient populations under surveillance with febrile, acute upper respiratory illness. These specimens should be collected weekly during the period of surveillance (based on climate) using a standard case definition (preferably WHO) and should be submitted to the local laboratory for the site.

○ During unusual outbreaks of influenza, such as outbreaks with unusual epidemiologic characteristics, or those related to infections by avian or other animal influenza viruses, collect epidemiologic information to characterize the outbreak and collect additional samples for viral isolation and submittal to the site laboratory. Report the outbreak to the National Influenza Center.

○ Prepare and provide regular weekly reports on the epidemiologic information that has been collected (influenza-like-illness and/or severe respiratory illness) to the local laboratory and to the National Influenza Center.

○ The laboratory will perform viral isolation for influenza viruses either in tissue culture or in eggs. Type positive isolates for influenza A and B, and if possible, subtype influenza viruses.

○ Store original clinical materials at −70 until the beginning of the next influenza season.

○ Submit viral isolates to the National Influenza Center within the country on at least a monthly basis for more complete analysis.

• The WHO National Influenza Center (NIC) within a country can be one of the surveillance sites and as such conduct all the activities listed above. If there are two or more NICs within a country each NIC could participate as a site, however NICs within a single country should work together and place emphasis on the addition of new surveillance sites. In addition, the NIC(s) should act as the focal point and authority within their country on influenza surveillance and be the main point of communication with WHO and WHO Collaborating Centers for the submittal of virus isolates and information into the global surveillance system. Each National Influenza Center (NIC) also will be responsible for the following activities:

○ Performing preliminary antigenic and, if possible genetic, characterization on the virus isolates submitted from the laboratories in the surveillance sites (including those isolates grown at the NIC).

○ Send representative virus isolates to one of the four WHO Collaborating Centers for Influenza, including any low reacting viruses, as tested using the WHO reagent kit, each month during the period of surveillance and more frequently, if possible.

○ If any viruses are unsubtypable as tested using the WHO kit, alert WHO and send the virus isolate to one of the four WHO Collaborating Centers for Influenza immediately.

○ During the period of surveillance, provide weekly influenza surveillance information to WHO through FluNet.

○ Provide an annual national summary on influenza activity, virological information and other relevant information on influenza to WHO and the WHO Collaborating Center in Atlanta, GA.

○ Provide technical expertise and training to support the surveillance sites and laboratories in the national network.

• Foreign Governments applying for funding through this cooperative agreement should play a substantial role in the development and support of the influenza surveillance network.

○ Facilitate the sharing of influenza surveillance information with the WHO Global Influenza Surveillance network by facilitating the regular exchange of information and viruses with one of the four WHO Collaborating Centers.

○ Provide continued support for influenza activities within the country and develop a plan for increased participation in the global influenza surveillance network over a five-year period.

○ Consider developing a task force or working group for influenza to determine ways to improve national influenza surveillance, develop prevention and control measures such as vaccine policy and work on pandemic preparedness.

• Facilitate communication between the veterinary and the human side of influenza surveillance. Develop systems for the sharing of information.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Provide technical assistance on techniques and reagents for the identification of influenza viruses. Annually provide the WHO reagent kit, which is produced and distributed by the WHO Collaborating Center for Influenza in Atlanta, GA.

• Provide epidemiological and laboratory training.

• Provide technical consultation on the development of country networks.

• Provide confirmation of antigenic analysis and more detailed characterization information on the influenza virus isolates submitted to CDC with written reports back to the National Influenza Center.

• Provide technical advice on the conduct of epidemiologic outbreak investigations.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: 5–10.

Approximate Average Award: $ 50,000 to 250,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $250,000.

Anticipated Award Date: August 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by foreign governments, Ministries of Health, or other government offices responsible for disease surveillance in humans. Only one application per country will be accepted.

III.2. Cost Sharing or Matching

Cost sharing or matching is not required for this program. However, the support provided through this cooperative agreement is meant to enhance, and not supplant, current influenza surveillance activities.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

This program is not designed or intended to support research, therefore no research will be supported under this cooperative agreement. Any applications proposing research will be considered non-responsive.

In order to apply and be eligible for this funding, your Country must have at least one National Influenza Center (NIC) of record at WHO. Documentation of WHO National Influenza Center status by the Ministry of Health and WHO will be sufficient to establish eligibility. Participation as a NIC is a requirement because to meet the goal of this announcement a significant number of the recipient activities require information and work to be conducted, reported and submitted through the WHO Surveillance network.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): An LOI is requested. Your LOI must be written in the following format:

- Maximum number of pages: 4
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Name of the government entity that is applying
- Documentation of National Influenza Center status
- Name and contact information for point of contact

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25

If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.

- Font size: 12 point unreduced
- single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Plan
- Documentation of Results
- Capacity
- Proposed Program Plan
- Goals
- Objectives
- Operational Plan
- Evaluation Plan
- Collaborations
- Budget and justification (not included in page limit) With staffing breakdown and justification, provide a line item budget and a narrative with justification for all requested costs, and separate line-item budgets for each research area. Be to include, if any, in-kind support or other contributions that will be provided by your country as part of the total project, but for which you are not requesting funding. Budgets should be consistent with the purpose, objectives and research activities and include:
- Line-item breakdown and justification for all personnel, *i.e.*, name, position title, annual salary, percentage of time and effort, and amount requested.
- For each contract: (1) Name of proposed contractor; (2) breakdown and justification for estimated costs; (3) description and scope of activities to be performed by contractor; (4) period of performance; (5) method of contractor selection (*e.g.*, sole-source of competitive solicitation); and (6) methods of accountability.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes
- Resumes
- Organizational Charts
- Letters of Support may be included.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: May 27, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 28, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the

application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

Use of Funds

- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)
- All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.—based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Ken Fortune, National Center for Infectious Diseases, Center for Disease Control and Prevention, Mailstop C–19, 1600 Clifton Road, NE., Atlanta, GA 30333, FAX: 404–639–4195, E-mail: *kef2@cdc.gov*.

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04106, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

- Objectives and Technical Approach (50 points total)
- Does the applicant describe specific objectives of the proposed program that are consistent with the purpose and goals of this announcement and which are measurable and time-phased? (10 points)
- Does the applicant identify appropriate sites with adequate geographic distribution for network? (10 points)
- Does the applicant present a detailed operational plan for initiating and conducting the program, which clearly and appropriately addresses all recipient activities that are feasible? Does the applicant clearly identify specific assigned responsibilities for all key professional personnel? Does the plan clearly describe the applicant's technical approach/methods for developing and conducting the proposed program and evaluation and does it appear feasible and adequate to accomplish the objectives? Does the applicant describe the existence of or plans to establish partnerships? (10 points)
- Does the applicant describe adequate and appropriate collaborations with other health agencies during various phases of the project? (10 points)
- Has the applicant provided a detailed, adequate and feasible plan for evaluating program results? This includes plans for evaluating the improvement of the influenza surveillance network as well as plans for evaluating other aspects of the collaboration (*e.g.*, training). (10 points)
- Capacity (35 points total)
- Does the applicant describe adequate resources and facilities (both technical and administrative) for conducting the project? This includes the capacity to conduct quality laboratory measurements and produce and distribute reports? (20 points)
- Does the applicant provide documentation that professional personnel involved in the project are qualified and have past experience and achievements in research and programs related to the program (as evidenced by curriculum vitae, publications, etc.)? (15 points)
- Background and Need (10 points)

Does the applicant adequately discuss the background for the proposed project and demonstrate a clear understanding of the purpose and objectives of this cooperative agreement program? Does the applicant illustrate and justify the need for the proposed project that is consistent with the purpose and objectives of this program?

- Measures of Effectiveness (5 points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant and the degree to which the measures are objective/quantitative and adequately measure the intended outcome?

- Budget and Justification (not scored): Does the applicant propose a budget that is reasonable, clearly

justifiable, and consistent with the intended use of cooperative agreement funds?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for Infectious Diseases. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

In addition, the following factors may affect the funding decision: Funding preference will be given to countries where resources are currently limited and influenza surveillance is not well established due to lack of resources and where there have been problems with avian influenza outbreaks posing threats to human health either in their country or surrounding countries. This would include countries in the following geographic region: Asia

V.3. Anticipated Announcement and Award Dates

Anticipated Award Date: August 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92 For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Ann Moen, Project Officer, National Center for Infectious Diseases, Center for Disease Control and Prevention Mailstop G–16, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404–639–4652, E-mail: *amoen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Steward Nichols, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2788, E-mail: *shn8@cdc.gov.*

Dated: April 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9494 Filed 4–26–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04129]

Improving the Effectiveness of the Diagnosis and Treatment of Tuberculosis and Multi-Drug Resistant Tuberculosis in the Philippines; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to support and ensure the implementation of tuberculosis (TB) control activities that are designed to develop, establish, and coordinate systems and procedures to address the obstacles to achieving control of TB and multi-drug resistant tuberculosis (MDR–TB). The Catalog of Federal Domestic Assistance number for this program is 93.116.

B. Eligible Applicant

Assistance will be provided only to Makati Medical Center (MMC) located in Manila, the Philippines.

The MMC is the only qualified organization that has the technical and administrative capacity to conduct the specific set of activities requested to support CDC TB and MDR–TB prevention and control activities in the Philippines under this cooperative agreement because:

1. The MMC is uniquely positioned, in terms of legal authority, ability, track record, infrastructure and credibility in the Philippines to develop and support TB and MDR-TB control activities in both public and non-governmental organization sites throughout the country.

2. The MMC has already established a framework and mechanisms to develop and implement TB and MDR–TB treatment and control activities in the Philippines, enabling it to immediately become engaged in the activities listed in this announcement.

3. The MMC has demonstrated its ability to coordinate and implement TB treatment and control activities

including MDR–TB and TB/HIV co-infection within the country.

4. The MMC has a unique and unparalleled relationship with the Department of Health (DOH), NTP, the Tropical Disease Foundation (TDF), and the PhilCAT, based on a rich history of collaboration.

5. The MMC Directly Observed Treatment Short Course (DOTS) Clinic has been in existence since February 1999, in response to the need for public-private partnership in the management of TB patients in the Philippines. The clinic is a collaboration of the MMC and TDF representing the private sector, and the DOH and Barangay San Lorenzo (BSL) representing the public sector.

6. The MMC was approved as the first pilot project worldwide to undertake DOTS-Plus by the Green Light Committee (GLC), a subgroup of the Scientific Working Group on Multi-Drug Resistant Tuberculosis of the WHO. The MMC DOTS-Plus clinic is the only facility in the Philippines providing treatment to MDR–TB patients.

7. The MMC has the ability to collect information, train staff and advocate for policy based on the experiences learned implementing DOTS-Plus activities.

8. The specific services that the MMC will deliver are directly associated with, and compliment, other ongoing CDC prevention strategies and activities in the Philippines.

C. Funding

Approximately $100,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before June 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Michael Qualls, Project Officer, Division of Tuberculosis Elimination, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road Mailstop E–10, Atlanta, Georgia 30333, Telephone: 404–639–8488, E-mail: *MQualls@cdc.gov*.

For budget assistance, contact: Steward Nichols, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, Telephone: 770–488–2788, E-mail: *SNichols1@cdc.gov*.

Dated: April 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9493 Filed 4–26–04; 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: OCSE–157 Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0177.

Description: The information obtained from this form will be used to report Child Support Enforcement activities to the Congress as required by law, to complete incentive measures and performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluating State Child Support programs.

Respondents: State, Local or Tribal Governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	4.0	216.0
Estimated Total Annual Burden Hours: 216.0				

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: *grjohnson@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: *katherine_t._astrich@omb.eop.gov*.

Dated: April 21, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–9544 Filed 4–26–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Child Care Bureau Research Scholars; Funding Opportunity

Federal Agency Name: Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF), Child Care Bureau (CCB).

Funding Opportunity Title: Child Care Bureau Research Scholars.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–YE–0006.

CFDA Number: 93.647.

DATES: The closing date for receipt of applications is June 28, 2004.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF), Child Care Bureau (CCB) announces the availability of funds to support new Child Care Research Scholar projects in fiscal year 2004. The CCB Research Scholar Grants are designed to increase the number of graduate students conducting dissertation research on child care issues that are consistent with the Bureau's research agenda.

I. Funding Opportunity Description

A. Child Care Bureau

Since its establishment in 1995, the Child Care Bureau (CCB) has been

dedicated to enhancing the quality, affordability, and supply of child care available for all families. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes funding for child care subsidies and activities to improve child care quality and availability. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams, including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care. With related State and Federal funding, CCDF provides more than $11 billion a year to States, territories, and tribes to help low-income, working families access child care.

The Bureau works closely with ACF regions, States, territories, and tribes to facilitate, oversee, and document the implementation of new policies and programs that support State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated approaches, family-focused services, and coordinated child care delivery systems. In all of these activities, the Bureau strives to support children's healthy growth and development in safe child care environments, promote children's early learning and school readiness, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. Child Care Bureau's Research Agenda

Since 2000, Congress has appropriated $10 million per year from the CCDF to be used for child care research and evaluation, and the CCB has used these funds to develop our research agenda. The Bureau's FY 2004 child care research agenda will continue ongoing projects and launch new research initiatives. The CCB's research agenda supports activities that will generate knowledge about child care services and programs and to inform policy decisions and solutions. We intend to improve our capacity to respond to questions of immediate concern to policymakers, strengthen the child care research infrastructure, and increase knowledge about the efficacy of child care policies and programs in providing positive learning and school readiness outcomes for children and employment and self-sufficiency outcomes for parents.

The CCB capacity to further child care related research and data is enhanced by the Child Care Policy Consortium, which is an alliance of research projects sponsored by the CCB. The consortium is comprised of researchers who have partnered with policy organizations, States, and local communities to link research, policy, and practice. The research projects of consortium members are broadly construed. For example, some projects describe State and local child care populations, services, and programs, while others focus on child care subsidy policies and market dynamics. In addition, some projects examine issues surrounding professional development and training approaches for child care providers.

In order to synthesize the broad array of child care information being generated, the Bureau has created the Child Care Research Collaboration and Archive (CCRCA), which serves as the Child Care Bureau's national research knowledge management system for the child care field. The CCRCA consists of an interactive Web site, an archive of data sets and reports, and a technical assistance support system to assist researchers and facilitate collaboration.

C. Purpose & Goals of the CCB Research Scholar Program

The purpose of this grant program is to help develop a national infrastructure for high quality child care research by increasing the number of upcoming researchers investigating child care issues that are consistent with the Bureau's research agenda.

The goals of this program area are as follows:

1. *To foster formal mentoring relationships between faculty members and graduate students who are pursuing research in the child care field.* Each student will work under the direct supervision of a faculty mentor who ensures that the project will address critical child care issues with a high level of technical quality. This type of student-mentor relationship should be collaborative and foster the skills needed to build the student's career trajectory. The faculty mentor will be listed as the Principal Investigator of the grant and will ensure that all requirements are met and that a high quality dissertation is completed.

2. *To support students' graduate training and professional development as researchers engaged in policy-relevant research.* Students are expected to become autonomous researchers who are connected to other professionals from diverse backgrounds across a variety of child care roles. Research projects may include independent studies conducted by the student or a well-defined portion of a larger study being conducted by the Principal Investigator holding a faculty position or senior research position and for which the graduate student will have primary responsibility. Research projects must use sound quantitative or qualitative research methodologies or some combination of the two. The student must be the author of the grant proposal.

3. *To encourage the active communication, networking, and collaboration among graduate students, their mentors, other prominent child care researchers, and policy makers.* Students whose projects involve community-level or administrative-level research are encouraged to work with an additional mentor from the field in order to gain a more comprehensive understanding of child care policies and practices. Students whose work involves secondary analysis of large data sets are encouraged to work closely with one or more senior investigators on the original project. In order to facilitate students' networking with policy makers, students are required to participate in the Child Care Bureau's Annual Meeting of the Child Care Policy Research Consortium and the State Administrators' Meeting.

D. Statutory Authority and Other Citations

Statutory authority: The Child Care and Development Block Grant Act of 1990 as amended (CCDBG Act); section 418 of the Social Security Act.

Code of Federal Domestic Assistance: The Code of Federal Domestic Assistance (CFDA) number is 93.647.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $120,000 per year.

Anticipated number of awards: It is anticipated that 4 awards will be made.

Ceiling of Individual Awards: $30,000 per year.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $30,000 in first year, $20,000 in second year.

Project Periods for Awards: Up to 24 months.

Funding Levels

Pending the availability of funds and receipt of satisfactory applications, grants will be awarded for up to $30,000 for the first 12-month budget period and up to $20,000 for a second year, for a total not exceeding $50,000 for the project period.

All monies must be used for the student's dissertation research, including required personnel costs, travel, and other expenses directly related to the research.

Number of Awards

Three or four dissertation grants will be awarded. No individual educational institution will be funded for more than one candidate unless applications from different universities or colleges do not qualify for support.

Project Period

This announcement is inviting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. Applications for continuation grants funded under this award beyond the one-year budget period but within the two year project period will be entertained in subsequent years on a non-competitive basis, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the government.

If the student expects to receive a doctorate by the end of the first 12-month budget period, the application should request funding for a single grant period. The need for a two-year project period should be identified in the current application (on SF–424A) and in the project narrative. A subsequent year award for continuation of the project will not be approved if the student has completed his/her dissertation by the end of the 12-month budget period. Scholars are expected to complete their dissertation by the end of the 24 month period.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants are institutions of higher education acting on behalf of graduate students who are pursuing a doctorate and who are completing a dissertation on child care issues. The student is expected to have an approved dissertation proposal before the beginning of the grant period. The institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council of Post-Secondary Accreditation.

Faith-based institutions or institutions serving minority populations, including but limited to Tribally Controlled Land Grant Colleges and Universities (TCUs) and Historically Black Colleges and Universities (HBCUs), are also eligible applicants. TCUs are those institutions cited in section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 *note*), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 *et seq.*), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, title II (25 U.S.C. 640a *note*). Those TCUs that are not accredited are not eligible to apply under this announcement. HBCUs are defined in the amended version of the Higher Education Act of 1965, codified at 20 U.S.C. 1061(2), are institutions established prior to 1964 whose principle mission was, and is, the education of Black Americans, and must satisfy section 322 of the Higher Education Act of 1965, as amended. Institutions which meet the definition of ''Part B institution'' in section 322 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1061(2), shall be eligible for assistance under this announcement.

Additional Information on Eligibility

Proof of Non-Profit Status

Any non-profit organization submitting an application must submit proof of its non-profit status at the time of submission (*see* section IV.2). The non-profit organization can accomplish this by providing (a) a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items listed above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $30,000. An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and will be returned to the applicant without further review.

III.2. Cost Sharing or Matching and Indirect Costs

There are no matching requirements. Because of the small size of these grants and their value to institutions of higher learning as well as to the student scholars, applicants are strongly encouraged to waive any allowable indirect costs in their applications.

III.3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Applications that fail to follow the required format described in section IV.2 Application Requirements will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

This full announcement can be obtained via the following link: *http://www.acf.hhs.gov/programs/ccb*. If you are unable to download the complete announcement, requests for applications may be sent to: ACYF Operations Center, c/o The Dixon Group, RS/CCB Funding, 118 Q Street, NE., Washington, DC 20002–2132, phone: 800–351–2293, e-mail: CCB@dixongroup.com.

IV.2. Content and Form of Application Submission

Format and Organization. An original and two copies of your application must be submitted. Applicants are strongly encouraged to limit their application to 100 pages, double-spaced, with standard

one-inch margins and 12 point fonts. This page limit applies to both narrative text and supporting materials. In addition, applicants should number the pages of their application and include a table of contents.

Applicants are advised to include all required forms and materials and to organize these materials according to the format presented below:

a. Cover Letter.

b. Required Standard Forms:

- Standard Application for Federal Assistance (forms 424 and 424A).
- Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs, with their applications.
- Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.
- Applicants must make the appropriate certification of compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the application, applicants are providing the certification and need not mail back a certification form.
- Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environment Tobacco Smoke.

c. Table of Contents.

d. Project Narrative Statement.

e. Appendix.

Complete Contact Information for Student and Faculty Advisor.

Curriculum Vitae for Student and Faculty Advisor.

Letter of Support from Advisor.

Official Transcript of Student Reflecting Graduate Courses.

Private, non-profit organizations are encouraged to submit, with their applications, the optional survey located under ''Grant Manuals & Forms'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not email an electronic copy of a grant application.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov and send you a second confirmation, which will include an ACF tracking number.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*.

You may search for the downloadable application package by the CFDA number.

Content of Project Narrative Statement: The project narrative statement contains most of the information on which applications will be competitively reviewed. The project narrative should be carefully developed in accordance with the Bureau's research goals and agenda, the requirements listed in the Uniform Project Description (section V.A), and the evaluation criteria (section V.B).

The following sections from the Uniform Project Description are included as part of the project narrative statement:

a. Project Summary Abstract.

b. Objectives and Need for Assistance.

c. Approach—Research Design and Methodology.

d. Approach—Management Plan.

e. Staff and Position Data.

f. Budget and Budget Justification.

IV.3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on June 28, 2004. Mailed applications received after the closing date will be classified as late. Handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date at: ACYF Operations Center, c/o the Dixon Group, Inc., RS/CCB Funding, 118 Q Street, NE., Washington, DC 20002–2132.

Applications handcarried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday (excluding Federal holidays), at: ACYF Operations Center, c/o the Dixon Group, RS/CCB Funding, 118 Q Street, NE., Washington, DC 20002–2132. Phone: 800–351–2293, Email: *CCB@dixongroup.com*. The address must appear on the envelope/package containing the application with the note ''Attention: The Dixon Group.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACYF cannot accept applications by fax. Applicants will receive a confirmation postcard upon receipt of applications.

Notice of Intent To Submit Application: If you intend to submit an application, please e-mail the ACYF Operations Center and include the following information: the number and title of this announcement, your organization's name and address, and your contact person's name, title, phone number, fax number, and e-mail address. This notice is not required but is strongly encouraged. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for future program announcements.

Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God

(floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. Determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

The table below details when the materials need to be submitted and where these forms or formatting descriptions can be found.

What to submit	Required content	Required form or format	When to submit
Standard Application for Federal Assistance (forms SF 424, 424A, and 424B).	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Environmental Tobacco Smoke Certification ...	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Protection of Human Subjects	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Proof of Non-Profit Status	*See* Section III.B	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Project Narrative Statement	*See* Section IV.C and Section V.A and V.B.	Format described in Section IV.C and V.A. and V.B.	By application due date.
Contact Information, Vita, Letter of Support, Transcript.	*See* Section and IV.B and IV.G.	Format described in Section IV.B and IV.G ...	By application due date.

Additional Forms: Private-non-profit organizations may submit with their applications the voluntary survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm*.	By application due date.

IV.4. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Transferability. Grants awarded as a result of this competition are not transferable to another student or to another institution. Awards can not be divided among two or more students.

Concurrent Awards. A CCB research scholar grant may not be held concurrently with another federally funded dissertation grant or fellowship.

IV.6. Other Submission Requirements

Contact information for both the graduate student and the student's faculty mentor is required and should be included in the Appendix.

The application must include a letter from the faculty mentor stating that he/she approves the application and describing how he/she will regularly monitor the student's work. In addition, the letter must verify (a) the student's status in the doctoral program, (b) that the grant will be used to fund the student's dissertation research, and (c) that the student is within two years or less of completing his/her dissertation. This letter should be included in the Appendix.

In the Appendix the student must include an official transcript reflecting his/her completed graduate course work.

Electronic Submission: To submit an application electronically, please use the *http://www.Grants.gov* apply site. For complete details on how to submit electronically, please refer to section IV.2. Content and Form of Application Submission.

V. Application Review Information

V.1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting for this collection of information is estimated to average 15 hours for the Child Care Research Scholars, including time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The project description is approved under OMB Control number 0970–0139 which expires 03/31/04 (currently under review at OMB). An agency may not conduct or sponsor a collection of information unless it displays a valid OMB control number. In addition, a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Instructions: ACF Uniform Project Description (UPD). The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). The UPD was approved by the Office of Management and Budget (OMB), Control Number 0970–0139, expiration date 03/31/04. The generic UPD requirement is followed by the evaluation criterion specific to this announcement.

The Project Description Overview. The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Instructions for Preparing a Full Project Description.

1. Project Summary Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

2. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/ footnotes. Incorporate demographic data and participant/ beneficiary information, as needed.

In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. Additional Information

Following are requests for additional information that need to be included in the application:

a. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

b. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the

categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

5. General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

a. Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

b. Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

c. Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

d. Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

e. Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

f. Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

g. Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Evaluation Criteria: Eligible applications will be scored competitively against the evaluation criteria. These criteria will be used in conjunction with the other expectations and requirements set forth in this announcement to evaluate how well each proposal addresses the bureau's research agenda and the program goals.

Criterion 1: Objectives and Need for Assistance (35 Point Maximum)

The extent to which the application reflects a solid understanding of (a) critical issues, information needs, and research issues of the child care field, (b) the child care subsidy system and TANF, and (c) low-income working families from various cultural, language, and ethnic groups.

The extent to which the conceptual model, objectives and hypotheses are (a) well formulated and appropriately linked, (b) reflect the bureau's research agenda and goals, and (c) will contribute new knowledge to the field.

The effectiveness with which the application articulates the current state of knowledge on (a) the interplay among child care and other early care and education programs, (b) child care and children's development and well-being, or (c) child care and family self-sufficiency.

Criterion 2: Approach—Research Design and Methodology (35 Point Maximum)

The extent to which the proposed research design (a) appropriately links research issues, questions, variables, data sources, samples, and analyses (b) employs technically sound and appropriate approaches, design elements and procedures, and sampling techniques.

The extent to which the proposed design (a) reflects sensitivity to technical, logistical, and ethical issues that may arise (b) and includes realistic strategies for the resolution of difficulties.

The extent to which the researchers assure (a) adequate protection of human subjects, confidentiality of data, and consent procedures, as appropriate.

The extent to which the research design (a) specifies the measures to be used and their psychometric properties, (b) describes how these measures have been used to address the proposed research questions, and (c) describes how these measures have been used with the low-income, diverse population to be studied.

Criterion 3: Approach—Management Plan (Maximum of 10 Points)

The extent to which the application includes a management plan that (a) presents a sound framework for maintaining quality control over the implementation and ongoing operations of the study, (b) demonstrates how the researcher will gain access to necessary organizations, participants, and data sources, and (c) details how the mentor will actively facilitate this plan.

The extent to which the scope of the project is reasonable for the funds available and feasible for the time frame specified (d) includes an effective plan for the dissemination and utilization of information by researchers, policymakers, and practitioners in the field.

Criterion 4: Staff and Position Data (Maximum of 10 Points)

The extent to which the student and his/her mentor (a) demonstrate competence in the areas addressed by the proposed research, including relevant background, experience, and training on related research or similar projects, (b) demonstrate expertise in research design, sampling, field work, data processing, statistical analysis, reporting, and information dissemination to academic and policy communities, (c) reflect an understanding of the child care subsidy system and the child care needs of low-income families and the complexities of conducting research within that system and the diverse cultural, language, and ethnic population it serves.

Criterion 5: Budget and Budget Justification (Maximum of 10 Points)

The extent to which the proposed project costs (a) are reasonable, appropriately allocated, and sufficient to accomplish the objectives, research design, and dissemination plan (b) include funds for the student, and his/her mentor if applicable, to participate in the Child Care Bureau's Annual Meeting of the Child Care Policy Research Consortium and the State Administrators' Meeting in Washington, DC, and (c) are justified according to the needs and objectives of carrying out the proposed project.

V.2. Review and Selection Process

Application Process. This announcement includes all of the information needed to apply for funding. Detailed instructions for preparing and submitting applications are described. Applicants are advised to follow the prescribed content and format in preparing their applications.

Applicants are also advised to adhere to the guidelines describing the preparation of their Project Narrative Statement. This section of the proposal details the applicant's need for assistance, research design and methodology, management plan, staff and position data, and budget. It thus contains most of the information on which applications will be competitively reviewed. The Project Narrative Statement will be evaluated according to the evaluation criteria (section V.B) and the Uniform Project Description (section V.A).

Application, Review, Selection, and Award. Each application will be screened to determine whether the applicant institution is eligible. Applications from ineligible institutions will be excluded from the review.

a. The review will be conducted in Washington, DC. Expert reviewers may include researchers, Federal or State staff, child care administrators, or other individuals experienced in child care research and evaluation. A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research goals and expectations, its fit with the bureau's research agenda, and the evaluation criteria.

b. Given the involvement of non-Federal reviewers, applicants have the option of omitting from the application copies (but not the original) specific salary rates or amounts for individuals specified in the budget and individuals' Social Security Numbers. If the applicant omits individual salary information on the application copies, the copies must include summary salary information.

c. Panelists will provide written comments and assign numerical scores for each application. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

d. In addition to the panel review, the Child Care Bureau may solicit comments from other Federal offices and agencies, States, non-governmental organizations, and individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. The Bureau will consider their comments, along with those of the panelists, when making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet its overall research goals.

e. The ACYF Commissioner will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) The rank order of applicants resulting from the competitive review, (2) staff review and consultations, (3) the combination of projects that best meets the bureau's research objectives, (4) the funds available; and (5) other relevant considerations.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will be notified via a notice of award signed by the grants officer which will document the funding level, terms and conditions of the award, reporting requirements, effective date of the award, budget period for which support is given, and the total project period for which support is provided.

VI.2. Administrative and National Policy Requirements

45 CFR parts 74 and 92.

Conference Attendance. The student must attend and present a poster at the Annual Meeting of the Child Care Policy Research Consortium and pre-conference each year of the grant. This conference is typically scheduled during the spring of each year. In addition, the student must attend and present at the State Administrators' Meeting typically held in the summer of each year. The budget should reflect travel funds for both conferences. Faculty advisors are strongly encouraged to attend these conferences as well.

Archiving and Publishing. The student must agree to archive his/her approved dissertation document with the Child Care Research and Collaboration Archive (CCRCA). The student must also work with Child Care Bureau staff and CCRCA staff to publish a research/policy brief that can be published on the CCRCA Web site.

VI.3. Reporting Requirements

Programmatic Reports: All grantees will be required to submit semi-annual progress reports that describe major accomplishments during the previous six months, plans for the next six months, problems or difficulties encountered and plans for their resolution, significant research findings, and dissemination activities. The final report is due 90 days after the end of the grant period.

Financial Reports: Grantees will also be required to submit semi-annual fiscal reports on the Standard Federal Form 269 (long version). A final report documenting the project activities and results will be due 90 days after the end of the grant period.

VII. Agency Contacts

Application Process Contact: ACYF Operations Center, c/o the Dixon Group, RS/CCB Funding, 118 Q Street, NE., Washington, DC 20002–2132; phone: 800–351–2293, e-mail: *CCB@dixongroup.com*.

Program Office Contact: Dr. Stephanie Curenton, Child Care Bureau Policy and Research Division, Child Care Bureau, 330 C Street, SW., Washington, DC 20447; phone: (202) 205–9899, e-mail: *scurenton@acf.hhs.gov*.

Grants Management Office Contact: William Wilson, Grants Management Officer, 330 C Street, SW., Switzer Bldg, Room 2070, Washington DC 20447; phone: (202) 205–8913, e-mail: *wwilson@acf.hhs.gov*.

VIII. Other

None.

Dated: April 7, 2004.

Frank Fuentes,

Deputy Commissioner, Administration for Children, Youth and Families.

[FR Doc. 04–9545 Filed 4–26–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity Title: Infant Adoption Awareness Training Program

AGENCY: Administration for Children and Families (ACF) & Children's Bureau, HHS.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–CG–0015.

CFDA Number: 93.254.

Due Date for Applications: The due date for receipt of applications is June 28, 2004.

I. Funding Opportunity Description

The purpose of this funding opportunity is to award cooperative agreements to adoption organizations for the purpose of developing and implementing new, or adapting and implementing existing, Infant Adoption Awareness Training Programs (IAATP) that train the designated staff of eligible health centers in providing adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women. The grantees will provide instruction on their curricula to trainers, who will provide training to health center staff. This instruction may be conveyed using training-of-trainers (TOT) courses or other mechanisms that provide continuity and consistency in the training for the instructors.

Background

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services that support and strengthen family life, seeks joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents. The concerns of ACYF extend to all children from the prenatal period through adolescence. Many of the programs administered by the agency focus on children from low-income families; abused and neglected children; children and youth in need of foster care, independent living, adoption or other child welfare services; preschool children; children with disabilities; runaway and homeless youth; and children from Native American and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates, and supports child abuse and neglect prevention and child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services State Grants Program, Child Welfare Services Training Programs, the Independent Living Program, the Adoption Opportunities Program, the Abandoned Infants Assistance Program, programs supported by the Promoting Safe and Stable Families Act, the Court Improvement Program, and programs funded under the Child Abuse Prevention and Treatment Act (CAPTA), including Basic State grants, the child abuse and neglect discretionary program, the Community-Based Family Resource and Support Program, and the Children's Justice Act Program. The Children's Bureau programs are designed to promote the safety, permanency, and well-being of all children. Training activities such as the Infant Adoption Awareness Training Program (IAATP) contribute to that effort.

The Children's Health Act

With the passage of Public Law 106–310, enacted October 17, 2000, the Congress emphasized the need to address children's health services, pediatric research, developmental disabilities, birth defects prevention, prenatal and postnatal care, and other activities regarding children's health and well-being. Title XII, Subtitle A—Infant Adoption Awareness of the Children's Health Act authorized the U.S. Department of Health and Human Services (HHS) to make grants available to national, regional, or local adoption organizations for the purpose of developing and implementing programs to train the designated staff of eligible health centers in providing adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women. In compliance with the legislation, HHS activities include the following:

- Establish and supervise a process through which adoption organizations and public health entity representatives collaborate to develop best practice guidelines on the provision of adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to women;
- Award grant funds to adoption organizations to develop training curricula, consistent with the best practice guidelines;
- Ensure that adoption organizations conduct training for all eligible health centers; and
- Report to the appropriate committees of Congress evaluating the extent to which adoption information and referral, upon request, are provided by eligible health centers in order to determine the effectiveness of such training and the extent to which the training addresses the requirement to provide information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to women.

Statutory Authority: Section 330F of the PHS Act, as amended by Title XII, Subtitle A, of the Children's Health Act of 2000 [42 U.S.C. 254c–6].

Multi-Ethnic Placement Act

Training materials must encompass MEPA requirements. The Multiethnic Placement Act (MEPA) as amended by the Interethnic Placement Act (Section 1808 of the Small Business Job Protection Act of 1996) addresses the issue of race in foster care and adoption placements. Specifically, MEPA prohibits the delay or denial of any adoption or placement in foster care due to the race, color, or national origin of the child or the foster or adoptive parents and requires States to provide for diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children for whom homes are needed. Section 1808 of Public Law 104–188 affirms the prohibition against delaying or denying the placement of a child for adoption or foster care on the basis of race, color, or national origin of the foster or adoptive parents or the child involved [42 U.S.C. 1996b].

Definitions

Title XII of the Children's Health Act of 2000, which pertains to the IAATP, defines the term ''adoption organization'' as a ''national, regional, or local organization among whose primary purposes is adoption; that is knowledgeable in all elements of the adoption process and on providing adoption information and referrals to pregnant women; and that is a nonprofit private entity.''

The term ''designated staff'' pertains to staff at an eligible health center ''who provide pregnancy or adoption information and referrals (or will provide such information and referrals after receiving training under a grant).''

The term ''eligible health centers'' as defined in the legislation refers to ''public and nonprofit private entities that provide health services to pregnant women,'' and these entities are targeted for the receipt of training. These entities are not eligible to submit applications for funding under this program announcement to provide the training. There are approximately 3,000 entities that fit the definition of ''eligible health centers'' and are therefore eligible to receive training under the IAATP. The adoption organizations involved agree to make reasonable efforts to ensure that the eligible health centers with respect to which training under the grant is provided include eligible health centers that receive grants under section 1001 (relating to voluntary family planning projects); eligible health centers that receive grants under section 330 (relating to community health centers, migrant health centers, and centers regarding homeless individuals and residents of public housing); and eligible health centers that receive grants under this Act (Children's Health Act of 2000) for the provision of services in schools (subsection (a)(5)).

Projects funded under this program must do the following things:

The IAATP is designed to ensure that counselors in health clinics and other settings provide women who have unplanned pregnancies with complete and accurate information on adoption, as well as any other options available to them.

Grantees must adapt or develop an IAATP curriculum, invite designated staff of eligible health centers (including those funded under PHSA sections specified above) to training, schedule training, plan and implement IAATP sessions, and complete post-training activities (*e.g.*, participant reimbursement and evaluation).

Approximately four weeks after the award of the cooperative agreements, the project director, the curriculum designer and/or the training director for each IAATP will be required to attend a two-day meeting in Washington, DC, sponsored by the Children's Bureau for IAATP awardees funded under this funding opportunity. Attendees will become part of the membership of the IAATP Network. During this conference, DHHS staff will review the best practice guidelines developed for the IAATP and discuss the implications for developing or adapting the curricula and related educational materials. Scheduling matters and plans for ensuring that the designated staffs of eligible health centers receive training during the two-year course of the cooperative agreement will be outlined and discussed. The Children's Bureau anticipates reconvening the IAATP Network for a two-day meeting in Washington, DC, at the beginning of the second project year.

Grantees will be required to adapt existing training programs or to develop and implement new training programs for the designated staff of the eligible health centers that provide adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women.

Within four months of the award of the cooperative agreement, grantees will be required to submit to the Children's Bureau an IAATP curriculum for review and approval. After review of the submitted curriculum, the Children's Bureau may require the grantee to make revisions before implementing the training. The curriculum must:

(1) Be competency-based;

(2) Conform to professionally recognized standards for curriculum format and style;

(3) Be consistent with the best practices guidelines, required by the statute;

(4) Be pilot tested and appropriately modified, as necessary, before broad use; and

(5) Be reliably evaluated.

Grantees will be required to make reasonable efforts to ensure that the individuals who provide the program training are individuals who are knowledgeable in all elements of the adoption process and are experienced in providing adoption information and referrals in the geographic areas in which the eligible health centers are located.

To the extent possible, training of designated staff of the health centers is to be conducted in the geographic areas in which the centers are located. Grantees will be required to cooperate and coordinate with the Children's Bureau and the other members of the IAATP Network in selecting sites for health center staff training and scheduling these events to ensure that geographic regions are neither over-served nor under-served.

Within seven months of the award of the cooperative agreement, grantees will be required to begin training of the designated staff of health centers.

Grantees will be required to provide reimbursement to health centers that are grantees funded under PHSA Sections 330 or 1001 for all costs incurred in obtaining training for the designated staff.

Grantees will be required to cooperate fully in any and all evaluations of IAATP sponsored by the Department of Health and Human Services.

Grantees will be required to implement an evaluation of their IAATP project which:

(a) Includes appropriate performance feedback, data collection and periodic assessment of program progress that can be used effectively to improve the curriculum, as necessary, and serve as a sound basis for program improvements;

(b) Includes the effective use of objective performance measures that are clearly related to the intended outcomes of the program and will produce useful quantitative and qualitative outcome data;

(c) Collects high quality data on individuals and families, the types of services provided and used, the outcomes of these services, and their cost effectiveness;

(d) Includes appropriate procedures for collecting data collection and securing informed consent; and

(e) Includes appropriate procedures for an Institutional Review Board (IRB) review, if applicable.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Description of Federal Substantial Involvement with Cooperative Agreement: A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). There will be close monitoring by the Children's Bureau regarding the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes. There will also be close Children's Bureau monitoring during performance, in order to assure compliance with the intent of this funding. This monitoring will exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for all awards under this funding announcement in FY2004 is $9 million.

Anticipated Number of Awards: It is anticipated that up to 10 projects will be funded.

Ceiling on Amount of Individual Awards: The maximum Federal share of the project is dependent on the scope of the project submitted. The Children's Bureau will accept applications for projects of national, regional, or local scope. The Federal share of projects of national scope may not exceed $6,000,000 in the first budget period. The Federal share of smaller, regional projects may not exceed $1,500,000 in the first budget period. An application received that exceeds the upper value of dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $1,500,000 to $6,000,000 per budget period.

Project Periods for Awards: The projects will be awarded for a project period of 24 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Native American tribal governments (Federally recognized)
Native American tribal organizations (other than Federally recognized tribal governments)
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
Faith-based and Community-based organizations

Additional Information on Eligibility: Eligibility is limited to organizations among whose primary purposes are adoption and that are knowledgeable in all elements of the adoption process and in providing adoption information and referral to pregnant women. Faith-based and community organizations that meet all other eligibility criteria are eligible to apply.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

2. Cost Sharing or Matching

Cost sharing or matching funds are not required for applications submitted under this program announcement.

3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Applications that exceed the ceiling amount will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to follow the required format described in Section IV.2. Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington,

DC 20002–2132; Telephone: (866) 796–1591.

URL to Obtain Application: *http://www.Grants.gov*.

2. Content and Form of Application Submission

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of the grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on http://www.Grants.gov.
- You must search for the downloadable application package by the CFDA number.

Private, non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Please see Section V.1. Criteria for instructions on preparing the project summary/abstract and the full project description.

Each application must contain the following items in the order listed:

—Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in ''Organizational DUNS:'' box.

In Item 5 of Form 424, include name, phone number, and, if available, email and fax numbers of the contact person.

In Item 8 of Form 424, check ''New.''

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

—Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided and those in Section V. Application Review Information. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

—Certifications/Assurances. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a ''Certification Regarding Lobbying'' Form when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

By signing the ''Signature of Authorized Representative'' on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following grant and cooperative agreement requirements:

The applicant will have the project fully functioning within 90 days of the notification of the grant award.

The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.

The applicant will allocate sufficient funds in the budget to provide for the project director and the evaluator to attend an annual three-day grantees' meeting in Washington, DC and an early kick off meeting to be held within the first six months of the project (first year only) in Washington, DC. Attendance at these meetings is a grant requirement.

The applicant will participate if the Children's Bureau chooses to do a national evaluation or a technical assistance contract which relates to this funding opportunity.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm*.

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

—Project Abstract/Summary (one page maximum). Clearly mark this page

with the applicant name as shown on item 5 of the Form 424, identify the competitive grant funding opportunity and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project (see Section V. Application Review Information). It should describe the objectives of the project, the approach to be used and the results or benefits expected.

—Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in Section V. Application Review Information of this funding opportunity announcement providing information that addresses all the components. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

—Proof of non-profit status (if applicable). See Section III. Eligibility Information for submission information.

—Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

—Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner organization and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

—The application limit is 90 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the application receipt point specified in Section IV.3. Submission Dates and Times. The original copy of the application must have original signatures, signed in black ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this funding opportunity announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Tips for Preparing a Competitive Application: It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the Children's Bureau priority-area initiatives. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A ''responsive application'' is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be ''unresponsive'' generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

Organizing Your Application: The specific evaluation criteria in Section V. Application Review Information of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

Project Evaluation Plan: Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled ''Program Manager's Guide to Evaluation.'' A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/core/pubs_reports/prog_mgr.html* or ordered by contacting the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447; phone (800) 394–3366; fax (703) 385–3206; e-mail *nccanch@calib.com*.

Logic Model: A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/*

capbuilding/outcome/outcome_logicmdir.html.

Use of Human Subjects: If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. For more information about use of human subjects and IRB's you can visit these web sites: *http://ohrp.osophs.dhhs.gov/irb/irb_chapter2.htm#d2* and *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/ictips.htm*.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 28, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at ACYF Operations Center, c/o The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''ATTN: Children's Bureau.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms: Numbers for each required item correspond to the numbering of the description of these items in Section IV.2. Content and Form of Application Submission.

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	See application due date.
3.b. Certification regarding lobbying.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	See application due date.
4. Project Summary/Abstract	Summary of application request.	See instructions in this funding announcement	See application due date.
5. Project Description	Responsiveness to evaluation criteria.	See instructions in this funding announcement	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement.	See above	See above	See application due date.
8. Letters of agreement & MOUs.	See above	See above	See application due date.
9. Total application	See above	Application limit 90 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private-non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.''

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	See application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants

from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs. Construction is not an allowable activity or expenditure under this solicitation.

6. Other Submission Requirements

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

For Hand Delivery: Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''ATTN: Children's Bureau.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139 which expires 3/31/2004. 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.

General Instruction for Preparing Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget

(OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs. Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human

Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the application demonstrates a clear understanding of the goals and objectives of IAATP. The extent to which the proposed approach to curriculum adaptation or design and training implementation will contribute to achieving the legislative goals.

(2) The extent to which the training goals (end products of an effective project), objectives (measurable steps for reaching these goals) and outcomes are clearly specified and measurable, and reflect an understanding of the health care setting in which the training recipients work and the context in which eligible health centers operate.

(3) The extent to which the application demonstrates a thorough knowledge of the issues faced by adolescents and women with unplanned pregnancies and the importance of providing adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling.

(4) The extent to which the selection of the geographic region that will be served by the training, including the number and types of eligible health centers in the area is clearly justified.

(5) The extent to which the application demonstrates a thorough knowledge of the legal framework of adoption, and adoption services and resources in the geographic area in which the proposed training will be conducted.

(6) The extent to which the application describes the benefits that clients of the eligible health centers will derive.

(7) The extent to which the application demonstrates that the proposed curriculum and training will contribute to increased knowledge of the problems, issues, and effective strategies and best practices in the field.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which the design of IAATP curriculum:

(a) Is competency-based;

(b) Conforms to professionally recognized standards for curriculum format and style;

(c) Is consistent with the best practices guidelines required by the statute;

(d) Is culturally responsive to the diverse population of health center pregnancy counselors and their clients;

(e) Is pilot-tested and appropriately modified, as necessary, before broad use; and

(f) Can be readily evaluated.

(2) The extent to which the proposed plan for providing instruction on the curricula to trainers and the plan for these trainers providing training to health center staff is clear and likely to succeed.

(3) The extent to which the proposed plan for targeting the training to the medical audience for whom it is designed is clear and likely to succeed.

(4) The extent to which the proposed plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks is clear and likely to succeed.

(5) The extent to which the proposed plan to establish and coordinate linkages with other appropriate agencies and organizations on the local, State or Federal level serving the target population is clear and likely to succeed.

(6) The extent to which the application proposes a clear and convincing plan for evaluating the IAATP project. The extent to which this plan satisfies the requirements listed in Section I. Funding Opportunity Description.

(7) The extent to which the project is likely to yield findings or results about effective strategies, and contribute to and promote evaluation research and evidence-based practices that may be used to guide replication or testing in other settings.

(8) The extent to which products would be developed during the proposed project, providing information on strategies utilized and the outcomes achieved that would support evidence-based improvements of practices in the field. The extent to which the schedule for developing these products, and the proposed dissemination plan is appropriate in scope and budget.

(9) The extent to which the intended audience (*e.g.*, researchers, policymakers, and practitioners) for product dissemination is appropriate to the goals of the proposed project. The extent to which the project's products would be useful to each of these audiences. The plan for disseminating information. The mechanisms and forums that would be used to convey the information and support replication by other interested agencies.

(10) The extent to which the proposed plan for continuing this project beyond the period of Federal funding is realistic.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise in developing curricula and other educational materials incorporating best practice guidelines on the provision of adoption information; and experience with administration, development, implementation, management, and evaluation of similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the proposed project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this

size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application, it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. They will be interested in your plans for sustaining your project without Federal funds if the evaluation findings are supportive. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on unserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

Approved but unfunded applications: In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

3. Other

Anticipated Announcement and Award Dates: Applications will be reviewed in the Summer of 2004. Grant awards will have a start date no later than September 30, 2004.

VI. Award Administration Information

1. Award Notices

Successful applicants will receive a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant or cooperative agreement, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, if applicable, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

The Commissioner will notify organizations in writing when their applications will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

2. Administrative and National Policy Requirements

45 CFR Part 74 and 45 CFR Part 92

Conditions of the Cooperative Agreement: A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities

before implementation phases may begin and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). There will be close monitoring by the Children's Bureau regarding the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes. There will also be close Children's Bureau monitoring during performance, in order to assure compliance with the intent of this funding. This monitoring will exceed those Federal stewardship responsibilities customary for grant activities.

Faith-based organizations that receive funding may not use Federal financial assistance, including funds, to meet any cost-sharing requirements or to support inherently religious activities, such as worship, religious instruction, or prayer.

3. Reporting Requirements

Programmatic Reports and Financial Reports are required semi-annually with final reports due 90 days after project end date. All required reports will be submitted in a timely manner, in recommended formats (to be provided), and the final report will also be submitted on disk or electronically using a standard word-processing program.

Within 90 days of project end date, the applicant will submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect, 330 C Street, SW., Washington, DC 20447. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

Original reports and one copy should be mailed to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

VII. Agency Contacts

Program Office Contact

Pat Campiglia, 330 C Street, SW, Washington, DC 20447, Telephone: 202–205–8060, E-mail: *pcampiglia@acf.hhs.gov*.

Grants Management Office Contact

William Wilson, 330 C Street, SW, Washington, DC 20447, Telephone: 202–205–8913, E-mail: *wwilson@acf.hhs.gov*.

General

The Dixon Group, ACYF Operations Center, 118 Q Street, NE, Washington, DC 20002–2132, Telephone: 866–796–1591.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/*.

Copies of the following Forms, Assurances, and Certifications are available online at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm*.

Standard Form 424: Application for Federal Assistance
Standard Form 424A: Budget Information
Standard Form 424B: Assurances—Non-Construction Programs
Form LLL: Disclosure of Lobbying
Certification Regarding Environmental Tobacco Smoke
Standard Form 310: Protection of Human Subjects
Survey for Private, Non-Profit Grant Applicants (optional)

The State Single Point of Contact SPOC listing is available on line at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Dated: April 20, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–9547 Filed 4–26–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity Title: FY 2004 Street Outreach Program (SOP)

AGENCY: Administration for Children and Families, Administration on Children, Youth and Families, Family and Youth Services Bureau, HHS.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–YO–0016.

CFDA Number: 93.557.

Due Date for Applications: The due date for receipt of applications is June 11, 2004.

I. Funding Opportunity Description

The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB) invites eligible applicants to submit competitive grant applications under the Street Outreach program. FYSB awards grants to private, nonprofit agencies to conduct outreach designed to build relationships between grantee staff and street youth. The goal of these efforts is to help young people leave the streets. The local grantees provide a range of services directly or through collaboration with other agencies, specifically those working to protect and treat young people who have been, or who are at risk of being, subjected to sexual abuse or exploitation. These services include the following: Street-based education and outreach, access to emergency shelter, survival aid, individual assessments, treatment and counseling, prevention and education activities, information and referrals, crisis intervention, and follow up support. The program purpose is to provide education and prevention services to runaway, homeless and street youth, up to age 21, who have been subjected to or are at risk of sexual exploitation or abuse. The goal of the program is to establish and build relationships between street youth and program outreach staff in order to help youth leave the streets. The objectives are to provide support services that will assist the youth in moving and adjusting to a safe and appropriate alternative living arrangement.

- These services include, at a minimum, treatment, counseling, provision of information and referral services.
- Street outreach programs must have access to local emergency shelter space that is an appropriate placement for young people and that can be made available for youth willing to come in off the streets.
- Street outreach staff must have access to the shelter in order to maintain interaction with the youth during the time they are in the shelter.

A. Background on Runaway and Homeless Youth and Positive Youth Development

It is estimated that 1.5 million youth are runaway, homeless, or street youth in the United States. Many of these youth have left home to escape abusive situations or because they were not provided with their basic needs for food, shelter, and a safe, supportive environment.

Many young people living on the streets or away from home without parental supervision are highly vulnerable. They may be exploited by dealers of illegal drugs, become victims of street violence, or members of gangs

that provide protection and a sense of extended family. They may be drawn into shoplifting, survival sex or dealing drugs in order to earn money for food, shelter, clothing and other daily expenses. They often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society.

On the street, these youth may try to survive with little or no contact with medical professionals, the result being that health problems may go untreated and worsen. Without the support of family, schools and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work. Furthermore, while on the streets, unsheltered youth may create challenges for law enforcement and put themselves in danger. This situation calls for a community-based positive youth development approach to address the needs of runaway, homeless and street youth.

The array of social, emotional and health problems faced by youth on the street are dramatically compounded by the incidence of sexual exploitation and/or abuse. Street youth are victimized by strangers as well as by individuals known to the youth, and a significant number of homeless youth are exploited as they participate in survival sex to meet their basic needs for food and shelter. Because of these issues, sexually exploited youth often need more intensive services. Youth must be afforded the opportunity to slowly build trusting relationships with caring and responsible adults as the first step to successfully encouraging them to leave the streets.

In response to the needs of street youth who are subjected to or at risk of sexual exploitation or abuse, Congress amended the Runaway and Homeless Youth Act by authorizing the Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless and Street Youth Program under the Violent Crime Control and Law Enforcement Act of 1994. This program is referred to as the Street Outreach Program (SOP) for Runaway, Homeless and Street Youth.

B. What Is Positive Youth Development?

The positive youth development approach is predicated on the understanding that all young people need support, guidance, and opportunities during adolescence, a time of rapid growth and change. With this support, they can develop self-assurance and create a healthy, successful life.

The Family and Youth Services Bureau (FYSB) have worked to promote a positive youth development framework for all FYSB activities. This approach, which is asset-based rather than problem-focused, is intended for policy and program developers, program managers, youth services professionals, and others who care about young people. It intends to enhance capacity to develop service models and approaches that direct youth toward positive pathways of development.

1. Key elements of positive youth development are:

(a) Healthy messages to adolescents about their bodies, their behaviors and their interactions;

(b) Safe and structured places for teens to study, recreate, and socialize;

(c) Strengthened relationships with adult role models, such as parents, mentors, coaches or community leaders;

(d) Skill development in literacy, competence, work readiness and social skills; and

(e) Opportunities to serve others and build self-esteem.

If these factors are being addressed, young people can become not just ''problem-free'' but ''fully prepared'' and engaged constructively in their communities and society.

Positive developmental opportunities should be available to all young people during adolescence (intellectually, psychologically, socially, morally and ethically). Youth benefit from experiential learning, and they need to belong to a group while maintaining their individuality. At the same time, they want and need support and interest from caring adults. They also need opportunities to express opinions, challenge adult assumptions, develop the ability to make appropriate choices, and learn to use new skills, including leadership.

2. These key elements result in the following outcomes:

(a) Increased opportunities and avenues for the positive use of time;

(b) Increased opportunities for positive self-expression; and

(c) Increased opportunities for youth participation and civic engagement.

C. Legislative Authority

Grants for the Street Outreach Program are authorized by the Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless and Street Youth Program under the Violent Crime Control and Law Enforcement Act of 1994, as amended by the Runaway, Homeless, and Missing Children Protection Act of 2003, (Public Law 108–96). Text of this statute may be found at: *http://www.acf.hhs.gov/programs/fysb.*

D. Program Requirements

- Complete and submit a grant application following the instructions below.
- Statistical Reporting-By submitting an application, the applicant is agreeing to keep adequate statistical records profiling the youth and families serviced under this Federal grant and to gather and submit program data required by FYSB. This information is required by the RHY program legislation and defined in the user-friendly Runaway and Homeless Youth Management Information Systems (RHYMIS–LITE).
- Research and Evaluation-By submitting an application, the applicant is agreeing to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.
- Other Reports-By submitting an application, the applicant is agreeing to submit other required program and financial reports as instructed by FYSB

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $8.8 million in FY2004.

Anticipated Number of Awards: 44 to 88 awards.

Ceiling on Amount of Individual Awards: $200,000 per budget period.

An application that exceeds $200,000 will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $100,000 per budget period.

Project Periods for Awards: This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible Applicants

- Nonprofits organizations having a 501 (c) (3) status with the Internal

Revenue Service, other than institutions of higher education

• Faith-based and Community-based Organizations

Additional Information on Eligibility:

Any non-profit organization submitting an application must include proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing any one of the following:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

b. A copy of a currently valid IRS tax exemption certification.

c. A statement from a State taxing body, State Attorney General, or other appropriate State official certify that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly established non-profit status.

e. Any of the items in the subparagraphs immediately above for a State or nation parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. *Cost Sharing or Matching Required:* Yes.

Grantees must provide at least 10% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements, through cash contributions. For example, in order to meet the match requirements, a project requesting $200,000, must provide a match of at least $20,000. Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match.

Applications that fail to include the required amount of the cost sharing will be considered non-responsive and will not be eligible for funding under this announcement.

3. Other

All Applicants must have Dun & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Applicants should enter the assigned DUNS number in the upper right corner of the standard 424 form in the applicant identifier box.

Applications that fail to include the required amount of the cost sharing will be considered non-responsive and will not be eligible for funding under this announcement.

An application that exceeds $200,000 will be considered ''non-responsive'' and be returned to the applicant without further review.

IV. Application and Submission Information

1. *To Request an application package, write, e-mail, or call:* ACYF Operations Center, c/o The Dixon Group, Inc., SOP–FYSB Funding, 118 Q Street, NE, Washington, DC 20002–2132, *FYSB@dixongroup.com*, (866) 796–1591.

2. *Content and Form of Application Submission:* An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signature, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

The following are instructions and guidelines on how to prepare an application.

A. Forms and Certifications

Complete the Standard Forms 424, 424A, 424B and the certification forms: Lobbying, Disclosure of Lobbying, Drug-Free Workplace, Debarment, Tobacco Smoke.

Private, nonprofit organizations are encouraged to submit with their applications the survey located under Grant Related Documents and Forms entitled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424 B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the application, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke.

B. Project Summary/Abstract

Submit a one page summary of the project description with reference to the funding request.

C. Project Description

Describe the project clearly in 40 pages or less responding to the evaluation criteria, described in Section V.1. Criteria.

(1) The pages of the project description must be numbered and are limited to 40 typed pages starting on page 1 of ''Objectives and Need for Assistance''.

(2) The description must be double-spaced; single-sided, with at least 1/2 inch margins using not less than a 12 pitch size font.

(3) Each section should be titled with the corresponding evaluation criteria categories (Objectives and Need, Results and Benefits, Approach, Staff and Position Data, Organizational Profile, Budget Justification)

(4) Failure to comply with these requirements will result in the

application being deemed ineligible for review.

(5) *Pages over the limit will be removed from the competition and will not be reviewed.*

D. Supplemental Documentation

1. Applicants May Include a Maximum of An Additional 10 Pages of Supplemental Documentation

a. This may include brief resumes, position descriptions, proof of non-profit status (if applicable), maps, organization charts, etc.

b. Supplemental pages must be numbered starting with S–1.

c. Supplemental documentation over the 10-page limit will not be reviewed.

2. Letters of Support

Applicants may include a maximum of 10 letters of support or in reference to the project description. The letters of support are not counted against the project description or supplemental documentation page limits.

3. Letters of Agreement Summaries

Applicants are required to include a summary of the Letter of Agreement between the applicant agency and other agencies for services or referrals that directly affect the operation of the proposed project. Letters of Agreement are not counted against the project description or supplemental documentation page limits.

4. Sub-Contract Agreements Summaries

Applicants are required to submit a summary of the proposed sub-contract agreement if the applicant is proposing to provide a portion or all of the federal funds to another agency (sub-grantee) to support or complement street outreach services. The summary must describe which services will be carried out by the sub-contractor or sub-grantee. Sub-contract agreements are not counted against the project description or supplemental documentation page limits.

E. Electronic Copy Submission

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number (identified on the first page of this announcement).

3. *Submission Dates and Times:*

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 11, 2004. Mailed or hand-carried applications received after 4:30 p.m. on the closing date will be classified as late.

Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared. Complete application packages should include one original, signed and dated application plus two copies of all items listed below:

What to submit	Required content	Required form or format	When to submit
Narrative	Described in Section I of this Announcement.	Format described in Section V	By application due date.
SF 424, SF 424A and SF 424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Project Summary Abstract	Summary of application request	One page limit	By application due date.
Detailed Budget Narrative	Calculations, itemized budget content.	Categories must reflect categories on 424a.	By application due date.
Project Description	Responsiveness to evaluation criteria.	Format described in Review and Selection section. Limit 40 pages. Size 12 font, ½″ margins.	By application due date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm*.	By application due date.

What to submit	Required content	Required form or format	When to submit
Supplemental Documentation	Optional	In Content and Form of Application Submission Section. Limit 10 pages. Page numbers must start with S–1.	By application due date.
Letters of Support	Optional	In Content and Form of Application Submission Section. Limit 10 letters.	By application due date.
Letters of agreement	Optional	In Content and Form of Application Submission Section.	By application due date.
Sub-contract agreements	Optional	In Content and Form of Application Submission Section.	By application due date.

Additional Forms:

Private, nonprofit organizations are encouraged to submit with their applications the survey located under Grant Related Documents and Forms entitled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm*.	By application due date.

4. *Intergovernmental Review: State Single Point of Contact (SPOC), Notification under Executive Order 12372.*

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. The official list, including addresses, of the jurisdiction selected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

A list of the Single Points of Contact for each State and Territory is included with the application materials in this announcement.

5. *Funding Restrictions:*

A. Ineligible Applicants—State Government, local units of government, and for profit organizations.

B. Sterile Needles/Syringes—Federal Funds for this project may not be used for distributing sterile needles or syringes for the hypodermic injection of any illegal drugs.

C. Religious Activities—No organization may be discriminated against on the basis of religion in the administration or distribution of Federal financial assistance under social service programs. Faith-based organizations are eligible to compete for Federal financial assistance while retaining their identity, mission, religious references, and governance.

However, faith-based organizations that receive funding may not use Federal financial assistance, including funds, to meet any cost-sharing requirements, to support inherently religious activities, such as worship, religious instruction, or prayer. In addition, any participation in these activities by beneficiaries must be voluntary.

6. *Other Submission Requirements.*

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the ACYF Operations Center; c/o The Dixon Group Inc., ATTN: SOP–FYSB Funding, 118 Q Street, NE., Washington, DC 20002–2132 by 4:30 p.m. Eastern Standard Time (EST) on or before the closing date.

Deadline: Mailed applications shall be considered as meeting an announced

deadline if they are received on or before the deadline time and date at the ACYF Operations Center.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the ACYF Operations Center at the address above between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late Applications: Applications which do not meet the criteria stated above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline: ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there is widespread disruptions of the mail service, or in other rare cases. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Applicants will receive a confirmation postcard upon receipt of an application.

V. Application Review Information:

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB No. 0970–0139.

Public reporting burden for this collection of information is estimated to average 20 hours per overall response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections are included in the program announcement: The Uniform Project Description is approved under OMB control number 0970–0139, which expires 03/31/2004.

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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary; grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial Statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must

justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Self-explanatory.

Evaluation Criteria

In determining the quality of the project design, the following factors are considered:

A. Approach (35 Points)

1. Applications will be evaluated based on the extent to which the program's positive youth development philosophy and approach indicate how it underlies and integrates all proposed activities, including provision of services to runaway and homeless youth and involvement of the youth's parents or legal guardians. Specific information must be provided on how youth will be involved in the design, operation and evaluation of the program, as well as community involvement.

2. Applications will be evaluated based on the plan for proposed street outreach effort, including hours of operation, staffing pattern and staff safety plans.

3. Applications will be evaluated based on the plan for services designed to deal with sexual abuse and exploitation.

4. Applications will be evaluated on the range of services that will be offered to street youth and how those services will be provided. At a minimum, plans should be provided for street-based outreach and education, survival aid, individual assessment, counseling, prevention and education activities, information and referral services, crisis intervention and follow-up support. Applicant's description of services that will be provided by other agencies and appropriate letters of agreement must be included in the application.

5. If a Drop-In Center is proposed, applications will be evaluated on the plan designed to operate a drop-in center. The expected or estimated ratio of staff to youth, (hours of operation) and explain how it will be sufficient to ensure adequate supervision and treatment.

6. Applications will be evaluated on the plan designed to provide street-based outreach services where street youth congregate and the hours when youth will most likely avail themselves of those services (late afternoon, evenings, nights and weekends). The plan must clearly state what will be accomplished during these service hours.

7. Applications will be evaluated on the detailed plan designed to ensure guaranteed access to age appropriate emergency shelter services that can be made available to street youth. When emergency shelter is provided by an entity other than the applicant, a signed letter of agreement with the shelter provider must be included in the application. The agreement must stipulate that the applicant's street outreach workers will have guaranteed access to the street youth that are taking advantage of the shelter's services.

8. Applications will be evaluated on the current or anticipated barriers to effective delivery of services and the actions the program will take to overcome these barriers to serving this population, including persons with low English proficiency.

9. Applications will be evaluated on the resources that will be coordinated with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment, health care and other relevant service agencies in order to ensure appropriate service referrals and form service linkages for the project clients.

10. Applications will be evaluated on the current efforts or plans to work with organizations that serve victims of domestic violence and sexual assault in order to tap into their expertise and to coordinate services.

11. Applications will be evaluated on the detailed plan of procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway, homeless or street youth.

12. Applications will be evaluated on the plan for activities implemented under this project will be continued by the agency once Federal funding for the project has ended.

13. Applications will be evaluated on the specific plans for accomplishing program phase-out in the event the applicant cannot obtain new operating funds at the end of the 36-month project period.

B. Results and Benefits (20 Points)

In determining the quality of the project design, the following factors are considered:

1. Applications will be evaluated based on the extent to which the goals, objectives and outcomes to be achieved are measurable and identify the number and frequency of youth served annually.

2. Applications will be evaluated on the extent to which the outcomes will have an impact for the street youth and to the community being served.

3. Applications will be evaluated on the extent to which improvements in individual, family and community functioning will occur as a consequence of services provided.

4. Applications will be evaluated on the extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

C. Objectives and Need for Assistance (15 points)

In determining the quality of the project design, the following factors are considered:

1. Applications will be evaluated on the extent to which goals and objectives of the project will fulfill the purposes of the legislation identified above.

2. Applications will be evaluated on the conditions and needs of youth and families in the geographic area to be served and the estimated number and characteristics of runaway and homeless youth and their families, including their social needs and health problems. The discussion should include matters of family functioning and the health, education, employment and social conditions of the youth, including at-risk conditions or behaviors such as drug use, school failure and delinquency.

3. Applications will be evaluated on the extent of services currently available for runaway, homeless and street youth in the geographic areas to be served. Service gaps must be addressed and considered in developing program objectives.

4. Applications will be evaluated on the characteristics of the specific local environments frequented by runaway, homeless and street youth and demonstrate that program services will be located in or easily accessible to the area which is frequented by these street youth. Maps or other graphic aids may be included as part of the supplementary documentation's 10-page limit.

D. Staff and Position Data (10 Points)

In determining the quality of the project design, the following factors are considered:

1. Applications will be evaluated on the staff experience in working with runaway, homeless, and street youth populations.

2. Applications will be evaluated on the quality of skills, knowledge and experience of the project director and project staff. Biographical sketches or brief resumes of current and proposed staff, or job descriptions, should be included. Resumes must indicate what position the individual will fill and position descriptions must specifically describe the job as it relates to the proposed project. Such documents count against the 10-page supplemental documentation limit.

3. Applications will be evaluated on the extent to which the staff and volunteers are culturally competent and relate to the youth being served, *e.g.*, gender, ethnicity and life experiences.

4. Applications will be evaluated on the plan for street-based outreach supervision for street outreach staff and volunteers.

5. Applications will be evaluated on the plan for training efforts of project staff as well as staff of cooperating organizations and individuals. This plan must include training on agency policies; boundaries regarding job responsibilities; contact with and responsibilities to young people; policies on maintaining appropriate boundaries; safety planning; youth development; sexual abuse; and other relevant street life topics.

E. Organizational Profile (10 Points)

In determining the quality of the project design, the following factors are considered:

1. Applications will be evaluated on the extent of the organization's experience in working with RHY populations.

2. Applications will be evaluated on the characteristics of the applicant agency's organization; the types, quantities and costs of services it provides; any funding and contractual relationships with juvenile justice, probation and/or welfare agencies; and must identify and discuss the role of other organizations or multiple sites of the agency that will be involved in direct services to runaway and homeless youth through this grant. A list the organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Include address, phone number and staff contact for each entity if the contact is different from the individual on the SF 424.

3. If the agency is a recipient of funds from the Administration for Children and Families for services to runaway and homeless youth for programs other than that applied for in this application, applications will be evaluated on the plan for how services supported by these funds are or will be integrated with the existing services. An organizational chart may be provided.

F. Budget and Budget Justification (10 points)

Note: Applicant should refer to the above UPD Requirement in the Application Review Section for guidance when preparing the budget and narrative budget justification. The Line Item Budgets do not count against any page limitation, but budget justifications and description of fiscal control will count against the project description page limitation.

In determining the quality of the project design, the following factors are considered:

1. Applications will be evaluated on the extent to which the proposed line item budget and a budget justification calculates the types and quantities of activities to be implemented and how the costs are related and directly linked to the project description.

a. The line items reflects the same Budget Categories listed on standard form 424A, Section B, *i.e.*, personnel, fringe benefits, travel, equipment, supplies, contractual, other, total direct charges, indirect charges, and total budget.

b. Non-Federal share reflects the same Budget Categories where appropriate.

2. Applications will be evaluated on the extent to which computer equipment is available to ensure compatibility with the RHYMIS-LITE software. Applicants lacking the computer equipment for RHYMIS-LITE data collection must include an estimated cost for such equipment in their proposed budget. If the applicant already has such equipment, this fact must be noted. (Please note that the RHYMIS-LITE software operates best with hardware in general use from 1999 to present.)

3. Applications will be evaluated on the anticipated cost per child for the total services.

4. Applications will be evaluated on the identification of fiscal controls that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received, as well as the accounting of cash and in-kind for non-federal match.

2. *Review and Selection Process:*

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation against the specific competitive grant evaluation criteria. This review will be conducted in Washington, D.C., by panels of non-Federal experts knowledgeable in the areas of runaway and homeless youth, youth development and human services. The overall panel review process is managed by Federal staff.

Application review panels will assign a score (maximum score of 100) to each application, identifying its strengths and weaknesses based on the application's responsiveness to the evaluation criteria. Central and Regional Office staff will conduct administrative reviews of those applications within funding range. After all reviews have been completed, FYSB staff will recommend the applications for funding to the Commissioner, ACYF.

In cases where more applications are approved for funding that ACF can fund with the money available, the Grants Officer shall fund application in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved application up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria has not changed. However, they must then be placed in rank order along with other applications in later competition.

3. *Anticipated Announcement and Award Dates:*

All awards will be made on or before September 30, 2004.

VI. Award Administration Information

1. Award Notices

A. *Successful Applicants:*

Successful applicants will be notified through the issuance of a Financial Assistance Award document, signed by an authorized Grants Officer, which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. Awards will be made on or before September 30, 2004.

B. *Unsuccessful Applicants*

Organizations whose applications will not be funded will be notified in writing by the Administration on Children, Youth and Families by September 30, 2004.

2. Administrative and National Policy Requirements

45 CFR Part 74

Public Law 108–96

3. Reporting Requirements

A. Programmatic Reports: semi-annually with final report due 90 days after the project end date.

B. Financial Reports: semi-annually with final report due 90 days after the project end date.

VII. Agency Contacts

Program Office Contact: Kelli Matson-Geist, Email: *FYSB@dixongroup.com*, Telephone number: (866) 796–1591.

Grants Management Office Contact: William Wilson, ACF Office of Grants Management, 330 C Street, SW, Washington, DC 20447, Email: *wwilson@acf.hhs.gov*, Telephone: 202–205–8913.

VIII. Other Information

None

Dated: April 20, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–9548 Filed 4–26–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity Title: CSBG T/TA Program—Train the Trainers

AGENCY: Administration for Children and Families, Office of Community Services, HHS.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–ET–0008.

CFDA Number: 93.570.

Due Date for Applications: The due date for receipt of applications is June 11, 2004.

I. Funding Opportunity Description

The Office of Community Services (OCS) within the Administration for Children and Families (ACF) announces that competing applications will be accepted for a new grant pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training and Educational Services (COATES) Human Services Reauthorization Act of 1998, (Pub. L. 105–285).

The proposed grant will fund a continuation of the ''train-the-trainers'' approach to helping States and local CSBG eligible entities sustain and advance their implementation of Results Oriented Management and Accountability, or ROMA in support of a national community action goal (''Agencies Increase their Capacity to Achieve Results'').

Definitions of Terms

The following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the ''low-income'' community, or the ''religious'' community or the ''professional'' community. The individual members of these ''communities'' may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, *i.e.*, (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network

includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Eligible applicants described in this announcement shall be eligible entities, organizations, (including faith based) or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. See description of Eligible Entities below.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under Section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under Sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farm worker organizations that received CSBG funding in the previous fiscal year.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Non-profit Organization refers to an organization, including faith-based, which has ''demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low income families and communities.'' Acceptable documentation for eligible non-profit status is limited to: (1) A copy of a current, valid Internal Revenue service tax exemption certificate; (2) a copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; and/or (3) Articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Outcome Measures are definable changes in the status or condition of individuals, families, organizations, or communities as a result of program services, activities, or collaborations.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, *i.e.* activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Program Purpose, Scope and Focus

The Office of Community Services (OCS) intends to support the continuation of the ''train-the-trainers'' approach to helping States and local eligible entities sustain and advance their implementation of Results Oriented Management and Accountability, or ROMA. By spreading the training capacity and making available a group of trained trainers in almost every State over the past three years, almost all community action agencies have now had access to basic ROMA training.

Over the next four years, OCS will support both training of new ROMA trainers among States that do not have ''certified'' trainers at this time, or that are in need of replacement trainers or an expanded cadre of certified trainers to hasten or improve ROMA performance. The successful applicant will demonstrate in their application a strong and effective history of teaching community action officials how to train others in ROMA concepts and techniques. The successful applicant will also summarize their course curriculum and indicate the results of using that curriculum in terms of: (1) Numbers of trainers ''certified;'' (2) Numbers of States using trainers to extend ROMA training to local community action agencies; and (3) Evidence of improved administration, programs, and outcomes as a result of ROMA implementation.

Applicants must describe how they will provide follow-up assistance to trainers, including consultation and sharing of new and updated information on training techniques and content.

In addition to training and certifying additional ROMA trainers, OCS intends that the successful applicant will undertake the following activities during the course of the four-year grant period:

1. The creation and maintenance of a national ''trainer network'' that permits routine sharing of information, experiences, materials, and technical assistance among certified ROMA trainers;

2. The development and implementation of one or more OCS-sponsored ROMA conferences and training sessions for Federal agencies that administer major programs that serve low-income households and communities, including but not limited to programs within the following

Federal cabinet level Departments and agencies:

- Health and Human Services;
- Housing and Urban Development;
- Labor;
- Agriculture;
- Transportation;
- Justice;
- Education;
- Internal Revenue Service; and
- Social Security Administration.

The purpose of these sessions would be to encourage coordinated performance-based management practices among programs at the local level to help agencies achieve common results among low-income households and communities.

3. The development of a second curriculum supporting the implementation of ROMA in the Community Action network. This curriculum would provide specific management practices and the application of ROMA tools to integrate ROMA into the management and administration of community action programs and services.

II. Award Information

Funding Instrument Type: Grant.

Category of Funding Activity: ISS Income Security and Social Services.

Anticipated Total Priority Area Funding: $300,000.

Anticipated Number of Awards: One.

Ceiling on Amount of Individual Awards: $300,000 per budget period.

Floor on Amount of Individual Awards: None.

Average Projected Award Amount: $300,000 per budget period.

Project Periods for Award: This announcement is inviting applicants for project periods up to four years. An award, on a competitive basis, will be for a one-year budget period, although the project period may be for four years. An application for a continuation grant funded beyond the one-year budget period but within the four year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Electronic Link to Full Announcement: http://www.acf.hhs.gov/programs/ocs.

Federal Agency Contact:

Dr. Margaret Washnitzer, Program Manager (Primary Contact), E-Mail: *OCS@lcgnet.com*, Phone: 1–800–281–9519;

or

Barbara Ziegler Johnson, Team Leader (Secondary Contact), Office of Grant Management, E-Mail: *OCS@lcgnet.com*, Phone: 1–800–281–9519.

III. Eligibility Information

1. Eligible Applicants

Community Services Block Grant eligible entities, State Community Action Associations including faith-based organizations, nonprofit organizations having 501(c)(3) status, and nonprofits that do not have 501(c)(3) status.

Additional Information on Eligibility: As prescribed by the Community Services Block Grant Act (Pub. L. 105–285, Section 678(c)(2), eligible applicants are eligible entities (see definitions), organizations, or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code;

b. A copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status;

e. Or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

2. Cost Sharing or Matching

None.

3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services Operations Center, ATTN: Dr. Margaret Washnitzer, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209; Telephone: (800) 281–9519; E-mail: *http://www.Grants.gov*.

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original and the 2 copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative of the applicant organization, have original signatures, and be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You

may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*. You must search for the downloadable application package by the CFDA number.''

Application Content

An original and two copies of each application must be submitted. Each application must include the following components:

(a) *Table of Contents*

(b) *Abstract of the Proposed Project*—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

(c) *Completed Standard Form 424*—that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

(d) *Standard Form 424A*—Budget Information-Non-Construction Programs.

(e) *Narrative Budget Justification*—for each object class category required under Section B, Standard Form 424A.

(f) *Project Narrative*—A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.

Application Format

Each application should include one signed original application and two additional copies of the same application.

Submit application materials on white 8½x11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 65 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Additional Requirements

(a) The application must contain a signed Standard Form 424, Application for Federal Assistance, ''SF–424'', a Standard Form 424–A, Budget Information, ''SF–424A'', and signed Standard From 424–B, Assurance '' Non-Construction Programs, ''SF–424B'' completed according to instructions provided in this Program Announcement. The Forms SF–424 and SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets the requirements set forth in this announcement;

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the ''Eligibility Information'' section of this announcement;

Project Summary Abstract: Provide a one page (or less) summary of the project description with reference to the funding request.

Full Project Description Requirements: Describe the project clearly in 65 pages or less (not counting supplemental documentation, letters of support or agreements) using the following outline and guidelines. Applicants are required to submit a Full Project Description and must prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 65 typed pages starting on page 1 with the ''Objectives and Need for Assistance''. The description must be double-spaced, printed on only one side, with at least one inch margins. Pages over the 65 page limit will be removed from the competition and will not be reviewed.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria and adheres to the page limitation. In

addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known by the Community Services Block Grant (CSBG) network.

The maximum number of pages for supplemental documentation is 10 pages. The supplemental documentation, subject to the 10-page limit, must be numbered and might include brief resumes, position descriptions, proof of non-profit status, news clippings, press releases, etc. Supplemental documentation over the 10-page limit will not be reviewed.

Applicants must include letters of support or agreement, if appropriate or applicable, in reference to the project description. Letters of support are not counted as part of the 30-page project description limit or the 10-page supplemental documentation limit. All applications must comply with the following requirements as noted:

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 11, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler Johnson. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., Eastern Standard Time (EST), at the U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, between Monday and Friday (excluding federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Barbara Ziegler Johnson''. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

ACF will not send acknowledgements of receipt of application materials.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Completed Standard Form 424A	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Narrative Budget Justification	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

Additional Forms:

Private-non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on: *http://www.acf.hhs.gov/programs/ofs/form.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities that are needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative, and two complete copies. The application must be received at the address below by 4:30 PM Eastern Standard Time (EST) on or before June 11, 2004. Applications should be mailed to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, ATTN: Barbara Ziegler Johnson.

For Hand Delivery: Applicants must provide an original application with all attachments, signed by an authorized representative and two complete copies. The application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Applications may be delivered to: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler Johnson. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Pub.L. 104–13)

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB Approval Number 0970–0139.

The project description is approved under OMB control 0970–0139 which expires 3/31/04. 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.

Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

Instructions: ACF Uniform Project Description (UPD)

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). The UPD was approved by the Office of Management and Budget (OMB), control Number 0970–0139, expiration date 12/31/2003. The generic UPD requirement is followed by the evaluation criterion specific to the Community Services Block Grant legislation.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which

Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example such terms as the ''number of people served.'' When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria

Evaluation Criterion I: Approach (Maximum: 35 Points)

Factors:

(1) The work program is results-oriented, approximately related to the

legislative mandate and specifically related to the priority area under which funds are being requested. Application addresses the following: specific outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success.

(2) The application defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the description of the particular priority area.

Evaluation Criterion II: Organizational Profiles (Maximum: 25 Points)

Factors:

(1) The application demonstrates that it has experience and a successful record of accomplishment relevant to the specific activities it proposes to accomplish.

(2) If the application proposes to provide training and technical assistance, it details its abilities to provide those services on a nationwide basis. If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization.

(3) The application fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project.

(4) The application describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

(5) If subcontracts are proposed, the application documents the willingness and capacity of the subcontracting organization(s) to participate as described.

Evaluation Criterion III: Objectives and Need for Assistance (Maximum: 20 Points)

Factors:

(1) The application documents that the proposed project addresses vital needs related to the program purposes and provides statistics and other data and information in support of its contention.

(2) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, CAAs and local service providers and/or State and Regional organizations of CAAs and other local service providers.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 15 Points)

Factors:

(1) The application describes how the project will assure long-term program and management improvements for State CSBG offices, CAA State and/or regional associations, CAAs and/or other local providers of CSBG services and activities.

(2) The application indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

(3) If the application proposes a project with a training and technical assistance focus, it indicates the number of organizations and/or staff that will benefit from those services.

(4) If the application proposes a project with data collection focus, it describes the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

(5) If the application proposes to develop a symposium series or other policy-related project(s), it identifies the number and types of beneficiaries.

(6) The application describes methods of securing participant feedback and evaluations of activities.

Criterion V: Budget and Budget Justification (Maximum: 5 Points)

Factors:

(1) The resources requested are reasonable and adequate to accomplish the project

(2) Total costs are reasonable and consistent with anticipated results.

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement. The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

VI. Award Administration Information

1. Award Notices

Following approval of the application selected for funding, successful applicants will be notified through the issuance of a Financial Assistance Award which specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided and the

terms and conditions of the award. The Financial Assistance Award will be signed by a Grants Officer and transmitted via postal mail.

ACF will notify unsuccessful applicants after the award is issued to the successful applicant.

2. Administrative and National Policy Requirements

Grantees are subject to 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental)

3. Reporting

All grantees are required to submit semi-annual program reports with a final report due 90 days after the project end date. Grantees are also required to submit semi-annual financial status reports using the SF–269 with a final report due 90 days aftyer the project end date. A suggested format for the program report will be sent to the grantee after the award is made.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact: Dr. Margaret Washnitzer, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, E-Mail: *OCS@lcgnet.com*, Phone: 1–800–281–9519.

Grants Management Office Contact: Barbara Ziegler Johnson, Team Leader, Office of Grants Management, Division of Discretionary Grants, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, E-Mail: *OCS@lcgnet.com*, Phone: 1–800–281–9519.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: April 16, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–9546 Filed 4–26–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Animal Drug User Fee Rates and Payment Procedures for Product, Establishment, and Sponsor Fees for Fiscal Year 2004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for product, establishment, and sponsor fees for fiscal year (FY) 2004. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA), Public Law 108–130, authorizes FDA to collect user fees for certain animal drug applications, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the product, establishment, and sponsor fee rates for FY 2004. A separate notice was published establishing fee rates and payment procedures for animal drug application fees for FY 2004. For FY 2004, the product fee rate is $1,750, the establishment fee rate is $23,950, and the sponsor fee rate is $15,450. FDA will issue invoices for FY 2004 product, establishment, and sponsor fees on or about May 1, 2004. Those invoices will be due and payable within 30 days of the date of the invoice.

FOR FURTHER INFORMATION CONTACT: Visit the FDA Web site at *http://www.fda.gov/oc/adufa* or contact Robert Miller, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 301–827–5436. For general questions, you may also e-mail the Center for Veterinary Medicine at *cvmadufa@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the act (21 U.S.C. 379j-12), establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (see 21 U.S.C. 379j-12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j-12(d)).

For FYs 2004 through 2008, the act establishes aggregate yearly revenue amounts for each of these fee categories. Revenue amounts established for years after FY 2004 are subject to adjustment for inflation and workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for inflation and workload.

This notice establishes rates for FY 2004 for product, establishment, and sponsor fees. These fees are effective in FY 2004. FDA will publish a separate notice on or about August 1, 2004, providing rates for FY 2005, which begins October 1, 2004. In the **Federal Register** of February 18, 2004, FDA published a separate notice establishing fee rates and payment procedures for animal drug application fees for FY 2004 (69 FR 7646).

II. Product Fee Calculations for FY 2004

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (see 21 U.S.C. 379j-12(a)(2)). The term ''animal drug product'' is defined in 21 U.S.C. 379j-11(3). The product fees are to be established so that they will generate the fee revenue amounts specified in the statute: $1,250,000 for FY 2004; $2,000,000 in FY 2005; and $2,500,000 in FYs 2006, 2007, and 2008 (see 21 U.S.C. 379j-12(b)(2)), adjusted for inflation and workload. Since FY 2004 is the first year of the program, there are no adjustments for workload or inflation. However, these adjustments will be made to the statutory revenue amounts each year after FY 2004 (see 21 U.S.C. 379j-12(c)(1) and (c)(2)).

To set animal drug product fees to realize $1,250,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2004. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the act, and matched this to the

list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of April 1, 2004, FDA found a total of 774 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. While the number of applications pending after September 1, 2003, will increase between April 1, 2004, and the end of FY 2004, the number of products potentially subject to fees that have not already qualified for fees by April 1, 2004, is only 76. FDA is assuming that 25 percent of these remaining products, or 19, will qualify for fees because their sponsors will submit an application between April 1, 2004, and the end of September 2004. Based on this, FDA believes that 793 products will be subject to this fee in FY 2004.

The agency does not have data on the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug product fees in FY 2004, FDA is assuming that 10 percent of the products invoiced, or 79, will not pay fees in FY 2004 due to fee waivers and reductions. Based on experience with other user fee programs, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in the first year of this program. FDA may further adjust this estimate in setting fees for future years based on actual experience with product fee waivers and reductions.

Accordingly, the agency estimates that a total of 714 products will be subject to product fees in FY 2004 (793 minus 79).

B. Product Fee Rates for FY 2004

FDA must set the fee rates for FY 2004 so that the estimated 714 products that pay fees will generate a total of $1,250,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest $5, to be $1,750.

III. Establishment Fee Calculations for FY 2004

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who meets the following criteria: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C. 379j-12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year (see 21 U.S.C. 379j-12(a)(3)). The term ''animal drug establishment'' is defined in 21 U.S.C. 379j-11(4). The establishment fees are to be set so that they will generate the fee revenue amounts specified in the statute: $1,250,000 for FY 2004; $2,000,000 in FY 2005; and $2,500,000 in FYs 2006, 2007, and 2008 (see 21 U.S.C. 379j-12(b)(3)), adjusted for inflation and workload. Since FY 2004 is the first year of the program there are no adjustments for workload or inflation. However, these adjustments will be made to the statutory revenue amounts each year after FY 2004 (see 21 U.S.C. 379j-12(c)(1) and (c)(2)).

To set animal drug establishment fees to realize $1,250,000, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2004. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of April 1, 2004, FDA found a total of 55 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. While the number of applications pending after September 1, 2003, will increase between April 1, 2004, and the end of FY 2004, the number of establishments potentially subject to fees that have not already qualified for fees by April 1, 2004, is only 12. FDA is assuming that 25 percent of these remaining establishments, or 3, will qualify for fees because of additional applications submitted between April 1, 2004, and the end of September 2004. Based on this, FDA believes that 58 establishments will be subject to this fee in FY 2004.

The agency does not have data on the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug establishment fees in FY 2004, FDA is assuming that 10 percent of the establishments invoiced, or 6, will not pay fees in FY 2004 due to fee waivers and reductions. Based on experience with other user fee programs, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in the first year of this program. FDA may further adjust this estimate in setting fees for future years based on actual experience with establishment fee waivers and reductions.

Accordingly, the agency estimates that a total of 52 establishments will be subject to establishment fees in FY 2004 (58 minus 6).

B. Establishment Fee Rates for FY 2004

FDA must set the fee rates for FY 2004 so that the estimated 52 establishments that pay fees will generate a total of $1,250,000. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest $50, to be $23,950.

IV. Sponsor Fee Calculations for FY 2004

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who meets the following criteria: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the act or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j-11(6) and 379j-12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j-12(a)(4)). The sponsor fees are to be set so that they will generate the fee revenue amounts specified in the statute: $1,250,000 for FY 2004; $2,000,000 in FY 2005; and $2,500,000 in FYs 2006, 2007, and 2008 (see 21 U.S.C. 379j-12(b)(4)), adjusted for inflation and workload. Since FY 2004 is the first year of the program there are no adjustments for workload or inflation. However, these adjustments will be made to the statutory revenue amounts each year after FY 2004 (see 21 U.S.C. 379j-12(c)(1) and (c)(2)).

To set animal drug sponsor fees to realize $1,250,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2004. Based on the number of firms that would have met this definition in each

of the past 3 years, FDA estimates that a total of 142 sponsors will meet this definition in FY 2004.

Careful review indicates that about one third, or 33 percent, of all of these sponsors will qualify for a minor use/minor species exemption. While FDA's other user fee programs do not contain a fee similar to a sponsor fee, FDA's current best estimate is that an additional 10 percent will qualify for other waivers or reductions, for a total of 43 percent of the sponsors invoiced, or 61, who will not pay fees in FY 2004 due to fee waivers and reductions. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in the first year of this program. FDA may further adjust this estimate in setting fees for future years based on actual experience with sponsor fee waivers and reductions.

Accordingly, the agency estimates that a total of 81 sponsors will be subject to sponsor fees in FY 2004 (142 minus 61).

B. Sponsor Fee Rates for FY 2004

FDA must set the fee rates for FY 2004 so that the estimated 81 sponsors that pay fees will generate a total of $1,250,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest $50, to be $15,450.

V. Adjustment for Excess Collections

If the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce the adjusted aggregate revenue amount in a subsequent year by that excess amount (21 U.S.C. 379j-12(g)(4)). No adjustments under this provision are required for fees assessed in FY 2004.

VI. Procedures for Paying Product, Establishment, and Sponsor Fees

FDA will issue invoices for product, establishment, and sponsor fees for FY 2004 on or about May 1, 2004. Invoices will be payable and due within 30 days of the date of the invoice. Complete payment instructions will be included with each invoice.

FDA will issue additional invoices after October 1, 2004, for any products, establishments, and sponsors that become subject to these fees after April 1, 2004, and these invoices will likewise include complete payment instructions.

Payment procedures and fee rates for FY 2004 application fees were provided separately on February 18, 2004 (69 FR 7646).

In early August 2004, FDA will establish animal drug user fee rates for FY 2005 for application, product, establishment, and sponsor fees. FDA intends to issue invoices for FY 2005 product, establishment, and sponsor fees in December 2004, with payments due on or before January 31, 2005 (see 21 U.S.C. 379j-12(a)(2), (a)(3), and (a)(4)). Application fees are due upon submission of the application (see 21 U.S.C. 379j-12(a)(1)(B)).

VII. May Some Animal Drug User Fees Be Waived or Reduced? How Do I Apply for Such Waivers or Reductions?

FDA will grant a waiver or reduction of one or more fees where the agency finds that:

- The assessment of the fee would present a significant barrier to innovation because of limited resources or other circumstances (see 21 U.S.C. 379j-12(d)(1)(A)).
- Fees exceed the costs (both anticipated present and future costs) of reviewing animal drug applications (see 21 U.S.C. 379j-12(d)(1)(B)).
- The animal drug is intended solely for use in either a type C free-choice medicated feed or a type B medicated feed intended for use in the manufacture of type C free-choice medicated feeds (see 21 U.S.C. 379j-12(d)(1)(C)).
- The animal drug application or supplement is intended solely to provide for a minor use or minor species indication (see 21 U.S.C. 379j-12(d)(1)(D)).
- The application is the first ever submitted by a qualifying small business (see 21 U.S.C. 379j-12(d)(1)(E) and (d)(3)).

Please note that all of the previously mentioned situations require the applicant to submit a written request to the agency for a waiver or reduction not later than 180 days after the fee is due (see 21 U.S.C. 379j-12(i)). Please refer to the ADUFA Web site at *http://www.fda.gov/oc/adufa* and click on the ''Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions'' link to find specific information on how to apply for any of the previously mentioned waivers or reductions. That document also discusses payment procedures for situations where FDA approves a waiver or reduction before the fee is due and situations where the fee waiver or reduction request is still pending when the fee is due.

VIII. Fee Schedule for FY 2004

The fee rates for FY 2004 are summarized in table 1 of this document.

TABLE 1.—FEE RATES FOR FY 2004

Animal Drug User Fee Category	Fee Rate for FY 2004
Animal drug application fee	
Animal drug application	$61,000
Supplemental animal drug application for which safety or effectiveness data are required	$30,500
Animal drug product fee	$1,750
Animal drug establishment fee[1]	$23,950
Animal drug sponsor fee[2]	$15,450

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

Dated: April 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9565 Filed 4–22–04; 4:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Delegation of Authority

Notice is hereby given that I have delegated to Commissioner Food and Drugs, the authority vested in the Secretary of the Department of Health and Human Services, under Section 353 of the Public Health Service Act (42 U.S.C. 263a), as amended, to implement CLIA's complexity categorization provisions as they apply to commercially available tests to the Commissioner of Food and Drugs (FDA). This authority includes, but is not limited to the following:

(a) Interpreting the CLIA provisions related to complexity categorization;

(b) Holding public workshops and meetings on CLIA complexity categorization; and,

(c) Developing and issuing implementing rules and guidance for CLIA complexity categorization.

The Administrator of the Centers for Medicare & Medicaid Services (CMS) will provide funding to implement CLIA's complexity categorization provisions as set forth in the Agency Agreement between FDA and CMS (CMS IA–04–01, FDA 224–04–6052), as amended.

Except as provided above, the existing delegation of authority to the Administrator of CMS concerning CLIA is unaffected.

This delegation supersedes the delegation of authority memorandum dated October 31, 2003, from the Secretary to the Commissioner of Food and Drugs, titled ''Delegation of Authority for the Clinical Laboratory Improvements Amendments of 1988 (CLIA), Section 353 of the Public Health Service Act, as amended.''

This delegation shall be exercised under the Department's existing delegation and policy on regulations. In addition, I ratified and reaffirmed any actions taken by you or your subordinates which involved the exercise of this authorities prior to the effective date of this delegation.

This delegation was effective upon date of signature.

Tommy G. Thompson,

Secretary, Department of Health and Human Services

[FR Doc. 04–9527 Filed 4–26–04; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–019 Fiscal Year 2004 Geriatric Academic Career Awards (GACA)—CFDA 93.250

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of deadline date.

SUMMARY: The Health Resources and Services Administration previously announced in the HRSA Preview, Volume 7, Summer 2003, that the deadline for receipt of applications for Geriatric Academic Career Awards in Fiscal Year 2004 is February 2, 2004. This deadline has been extended to July 1, 2004. Applications must be sent to the Geriatric Academic Career Awards Program Office, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 and postmarked July 1, 2004, or earlier to be considered for Funding in Fiscal Year 2004.

Dated: April 13, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–9472 Filed 4–26–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under the authority of Sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Public Law 100–713.

The following is a list of Indian Health Scholarship Recipients funded under sections 103 and 104 for Fiscal Year 2003:

Abeita, Steven John, University of New Mexico-Albuquerque, Pueblo of Isleta, New Mexico

Acothley, Regina, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah

Adakai, Tamelyn Blythe, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah

Adams Moses, Cynthia Regina, Langston University, Muscogee (Creek) Nation, Oklahoma

Albers, Travis Alan, University of Maryland, Turtle Mountain Band of Chippewa Indians of North Dakota

Alcorn, Winter Dawn, Rogers State College, Cherokee Nation, Oklahoma

Alden-Littlelight, Roanne Gail, Pacific University College, Crow Tribe of Montana

Allery, Lonnie William, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota

Allery, Rhea Neachet, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota

Allick, Shannon Lynn, Minot State University, Turtle Mountain Band of Chippewa Indians of North Dakota

Allison, Amanda, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah

Allison, Carol Ann, Montana State University-Northern, Turtle Mountain Band of Chippewa Indians of North Dakota

Allison, Rochelle Jade, University of New Mexico-Albuquerque, Navajo Nation of Arizona, New Mexico, & Utah

Allison, Roselinda, University of Phoenix, Navajo Nation, Arizona, New Mexico, & Utah

Allison-Quick, Eunice Mary, University of Oregon, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana

Anderson, Ella Mae, Gateway Community College, Navajo Nation, Arizona, New Mexico & Utah

Andis, Letetia Lynn, Bacone College, Cherokee Nation, Oklahoma

Antonio, Amber L., University of New Mexico-Albuquerque, Pueblo of Acoma, New Mexico

Armijo, Heather Denise, New Mexico State University, Pueblo of Jemez, New Mexico

Arnold, Carly Ellen, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah

Arnold, Delphine, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah

Arredondo, LaDonna Leann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma

Arviso, Tennille Raye, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah

Ashley, Natalie Lynn, Arizona State University, Navajo Nation, Arizona, New Mexico & Utah

Atene, Kathleen Cheryl, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah

Aubrey, Kathy Ann, Montana State University-Great Falls, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Avery, Nancy Dora, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Azure, Alissa Joy, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Babb, Tiana Marie, University of Oklahoma, Health Science Center, Kiowa Indian Tribe of Oklahoma
Babcock, Amy Roxanne, Tulsa City Area Voc Tech School, Cherokee Nation, Oklahoma
Bain, Edlin David, University of New Mexico College of Pharmacy, Navajo Nation, Arizona, New Mexico & Utah
Baker, Jennifer Lee, Oklahoma State University, Cherokee Nation, Oklahoma
Barbone, Michelle Dawn, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Barnes-Enloe, Rebecca Anne, Northeastern State University, Cherokee Nation, Oklahoma
Barnett, Stephanie Deann, University of Tulsa, Cherokee Nation, Oklahoma
Barry, Christina Jean, University of South Alabama, Central Council of Tlingit & Haida Indian Tribes
Barse, Allison Joy, Kansas Newman College, Kickapoo Tribe of Oklahoma
Bartlett, Lyndell Joy, Montana State University-Bozeman, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Bates, Winifred Stewart, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Battese, Kelly Joseph, University of Kansas School of Pharmacy, Miami Tribe of Oklahoma
Baxter, Pamela Jean, University of Washington, Choctaw Nation of Oklahoma
Beals, Bryan-James, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma
Bear-Pevehouse, Sallie Ann, University of Oklahoma, Health Science Center, Muscogee (Creek) Nation, Oklahoma
Becenti, Elton, New Mexico State University, Navajo Nation, Arizona, New Mexico, & Utah
Becenti, Shawnadine Karen, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Bedoni, Theda, Scottsdale Community College, Navajo Nation, Arizona, New Mexico, & Utah
Begay, Carlyle-Wilmer, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah
Begay, Lisa Danelle, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Begay, Lorena Rose, La Sierra University, Navajo Nation, Arizona, New Mexico, & Utah
Begay, Monica Calley, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Begay, Sheena Maria, New Mexico State University, Navajo Nation, Arizona, New Mexico, & Utah
Begay, Velma Mae, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Begaye, Julianna, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Begaye, Sheila Renee, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Begody, Winifred Belinda, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Behymer, Virginia May, University of Alaska-Anchorage, Aleut, Alaska
Belcourt, Jaime Ruth, Montana State University School of Nursing, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Bell, Sarah Rose, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Ben, Lynndella, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Benally, Jolene, Arizona Western College, Navajo Nation, Arizona, New Mexico, & Utah
Benally, Yolanda Jean, New Mexico State University, Navajo Nation, Arizona, New Mexico, & Utah
Benally-Thompson, Bret R., University of Minnesota-Duluth, Minnesota Chippewa Tribe (White Earth Band)
Bendure, Rodney David, Northeastern State University, Cherokee Nation, Oklahoma
Berry, Rebekah Sue, University of Central Oklahoma, Choctaw Nation of Oklahoma
Berryman, Mykala Sara, University of Oklahoma, Choctaw Nation of Oklahoma
Beyale, Shannon Marie, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah
Bigback, Jennifer Lee, Ohio State University College of Medicine, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Bighorn, Mary Johanna, University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana
Bighorse, Amanda Nicole, Northeastern State University, Cherokee Nation, Oklahoma
Bill, Miranda Lee, Cal State University Chico, Cortina Indian Rancheria of Wintun Indians of California
Billy, Carol Y., Weber State University, Navajo Nation, Arizona, New Mexico, & Utah
Billy, Larissia Jenny, University of Alaska, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Bingham, Zachary Scott, University of New Mexico-Albuquerque, Cherokee Nation, Oklahoma
Bishop, Jennifer Lynn, University of Tulsa, Seneca-Cayuga Tribe of Oklahoma
Black, Deborah Helen Pierce, Johns Hopkins University, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Blevins, Regina Kay, North Dakota State University, Choctaw Nation of Oklahoma
Blindman, Charlene Sue, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Blue Arm, Noelle E., University of North Dakota, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Boatwright, Melinda Lea, University of Oklahoma Dental School, Choctaw Nation of Oklahoma
Bointy, Michele Marie, University of Kansas, School of Social Welfare, Assiniboine & Sioux Tribes of The Fort Peck Indian Reservation, Montana
Boling, Adella Krista Marie, University of Alaska, Kenaitze Indian Tribe
Bowles, Charles Justin, Oklahoma State University, Citizen Potawatomi Nation of Oklahoma
Boyd, Cassandra Iva, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Bradfield, Lavone Glema, University of North Dakota, Standing Rock Sioux Tribe of North & South Dakota
Brady, Meagan Leigh, University of Oklahoma-Norman, Comanche Nation, Oklahoma
Branham-Williams, Jamie Kathleen, University of Iowa Dental School, Cherokee Nation, Oklahoma
Bressman, Rebecca Rae, Portland Community College, Citizen Potawatomi Nation, Oklahoma
Brewster, Sarah Kate, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma
Briggs, Misty Elaine, University of Oklahoma Dental School, Cherokee Nation, Oklahoma
Brinson, Timothy James, East Central University, Citizen Potawatomi Nation, Oklahoma
Brockelman, Cassandra May, Southwestern Oklahoma State University, Seminole Nation of Oklahoma
Brooks, Lisa Michelle, University of Maryland, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Brooks-Dugger, Shelly Beth, Southwest Texas State University, Cherokee Nation, Oklahoma
Brorby, Misty Dawn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Brown, Amanda Susan, Montana State University-Billings, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana
Brown, Christina Ann, University of North Dakota, Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Brown, Renaye Denise, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Bryant, Idella Marie, Midwestern University, Navajo Nation, Arizona, New Mexico, & Utah
Bryant, Joseph Preston, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Buenting, Lisa Lynette, Loma Linda University, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Bull, Lois Ann, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Burbank, Lenora Michele, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Burnside, Clint Ed, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah

Burr-Selle, Kandi Kay, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Burris, Brandon Christopher, University of Texas-Austin, Caddo Indian Tribe of Oklahoma
Burton, Amber Joy, University of Alaska School of Nursing, Alaska Native
Busch, Richard Eugene, University of Alaska-Fairbanks, Alaska Native
Butte, Jennifer Lynn, Glendale Community College, Navajo Nation, Arizona, New Mexico, & Utah
Byrd, Alpheus Lee, Carl Albert State College, Cherokee Nation, Oklahoma
Cain, Melanie Joy, Oklahoma State University, Pueblo of Santa Clara, New Mexico
Calvin, Shawn Allen, University of Oklahoma, Health Science Center, Choctaw Nation of Oklahoma
Calvin-Salyer, Amber Lorine, University of North Texas, Choctaw Nation of Oklahoma
Campbell, Jamie Renae, University of Oklahoma Dental School, Muscogee (Creek) Nation, Oklahoma
Carey, Amanda Kay, University of Oklahoma, Cherokee Nation, Oklahoma
Carter, Jason Daniel, University of Oklahoma, Cherokee Nation, Oklahoma
Carter, Nani Danielle, University of Oklahoma, Cherokee Nation, Oklahoma
Carver, Sharon Kay, Rogers State College, Cherokee Nation, Oklahoma
Cassador, Reyna Rose, San Juan Community College, Jicarilla Apache Nation, New Mexico
Cassutt, Robyn Amonda, Dakota Wesleyan, Central Council of Tlingit & Haida Indian Tribes
Cavanaugh, Casey Lynne, Idaho State University, Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Chalakee, Tara Nicole, Bacone College, Muscogee (Creek) Nation, Oklahoma
Champ, Jonalena, University of Houston, Crow Tribe of Montana
Charette, Nicole Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Charles, Vanessa Rae, Fort Lewis College, Navajo Nation, Arizona, New Mexico, & Utah
Chastain, Brian Gene, University of Oklahoma Dental School, Muscogee (Creek) Nation, Oklahoma
Childress, Michelle Josett, University of Central Oklahoma, Seminole Nation of Oklahoma
Chimoni, Reinette J., University of New Mexico-Albuquerque, Zuni Tribe of the Zuni Reservation, New Mexico
Clah, Melinda, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Clark, Ernestine, University of New Mexico-Gallup, Navajo Nation, Arizona, New Mexico, & Utah
Clark, Jayne, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Clark, Kari Rose, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Clasen, Tischa Lee, Butler County Community College, Cherokee Nation, Oklahoma
Clauschee, Reginald, Pima Community College, Navajo Nation, Arizona, New Mexico, & Utah
Clauschee, Susan Francine, Pima Community College, Navajo Nation, Arizona, New Mexico, & Utah
Clown, Delmar M., United Tribes Technical College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Cochran, Suzanne, Montana State University-Northern, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Colbert, Alexandria Naomii, University of Oklahoma, Chickasaw Nation, Oklahoma
Coleman-Hack, Kristi Lynn, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Cooeyate, Erin Quin, University of New Mexico-Gallup, Zuni Tribe of the Zuni Reservation, New Mexico
Cook, Elizabeth Jane, Southeastern Oklahoma State University, Choctaw Nation of Oklahoma
Cook, Michael Gerald, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Cooper, April Deann, University of Central Arkansas, Cherokee Nation, Oklahoma
Couch, Ashley Ariel, Northeastern State University, Cherokee Nation, Oklahoma
Coulter, Daniel Lee, Creighton University School of Medicine, Citizen Potawatomi Nation, Oklahoma
Cox, Elena Heath, University of Wisconsin, Stockbridge Munsee Community, Wisconsin
Craig, Tonya, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Cremer, Paul Clay, Harvard Medical School, Choctaw Nation of Oklahoma
Cribbs, Carolyn Suze, Sonoma State University, Cherokee Nation, Oklahoma
Croff, Heather Marie, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Croley, Amanda Jo, University of Oklahoma, Cherokee Nation, Oklahoma
Cross, Bryan Von, University of Oklahoma, Cherokee Nation, Oklahoma
Cruz, Leeann Katri, New Mexico State University, Pueblo of Acoma, New Mexico
Cullen Carroll, Shanna Marie, Alliant International University, Osage Tribe, Oklahoma
Curley, Christina, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Curley, Marsha Jean, Dixie State College of Utah, Navajo Nation, Arizona, New Mexico, & Utah
Dailey, Samuel, University of Alabama-Birmingham, Navajo Nation, Arizona, New Mexico, & Utah
Damon, Dezbaa Altaalkii, Arizona School of Dentistry, Navajo Nation, Arizona, New Mexico, & Utah
Davis, Alona, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Brandy Darlene, Western Carolina University, Eastern Band of Cherokee Indians of North Carolina
Davis, Heather Rae, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Jason Russell, Oregon State University, Chickasaw Nation, Oklahoma
Day, Autumn Ann, Cornell University, Minnesota Chippewa Tribe, Minnesota (Leech Lake Band)
Decker—Walks Over Ice, Amber Victoria, Rocky Mountain College, Confederated Salish & Kootenai of the Flathead Reservation, Montana
Dedam, Jean-Paul Henri, Dartmouth Medical School, Aroostook Band of Micmac Indians of Maine
Dele, Lessina, Midwestern University, Navajo Nation, Arizona, New Mexico, & Utah
Delmar, Marjorie, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Deroche, Elisabeth Louise, Central Washington University, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Desautel, Alice Junee Lu, Wenatchee Valley College, Confederated Tribes of the Colville Reservation, Washington
Dixon, Christian Brooke, University of Oklahoma, Cherokee Nation, Oklahoma
Dixon, Damon Brian, University of North Dakota, Hopi Tribe of Arizona
Dixon, Malia K., University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Dominguez, Lorrie Ann, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Draper, Melanie Brooke, University of Alaska School of Nursing, Cherokee Nation, Oklahoma
Dugan, Carysa Malaret, Arizona School of Health Sciences, Nez Perce Tribe of Idaho
Dunlap, Erin Lee, University of Oklahoma, Cherokee Nation, Oklahoma
Earley, Mary Margaret, University of Tulsa, Cherokee Nation, Oklahoma
Eddy, Patricia Ann, Northland Pioneer College, Navajo Nation, Arizona, New Mexico, & Utah
Edwards, Ralph Casey, University of Oklahoma, Health Science Center, Cherokee Nation, Oklahoma
Ekamrak, Joyce Anna, University of Alaska-Anchorage, Akiachak Native Community
Elkhair-Brown, Michelle Lianne, Johnson County Community College, Muscogee (Creek) Nation, Oklahoma
Ellis, Scott Anthony, Oklahoma City University, Cherokee Nation, Oklahoma
Elmore, Amber Dawn, Northeastern State University, Chickasaw Nation, Oklahoma
Emerson, Janice Odette, University of Oklahoma, Health Science Center, Kiowa Indian Tribe of Oklahoma
Emerson, Karen, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Empey, Erica Amanda, University of Portland, Confederated Tribes of the Grand Ronde Community of Oregon
Epaloose, Cassie, Pima Community College, Zuni Tribe of the Zuni Reservation, New Mexico
Eriacho, Margaret Alisha, University of New Mexico, College of Pharmacy, Zuni Tribe of the Zuni Reservation, New Mexico
Erickson, Janet Leigh, Montana State University-Northern, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

Etsitty, Marlene J., University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Eubanks, Andrea Jill, University of New Mexico, College of Pharmacy, Cherokee Nation, Oklahoma
Eversole, Maryn, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Fairbanks, Mary Elizabeth, University of Minnesota, Minnesota Chippewa Tribe, Minnesota
Feather, Sharon Ann, Cankdeska Cikana Community College, Spirit Lake Tribe, North Dakota
Feliz, Candelaria Cynthia, University of North Dakota, Navajo Nation, Arizona, New Mexico, & Utah
Fence, Heather Katherine, Angelo State University, Cherokee Nation, Oklahoma
Ferris-Lane, Dana Faye, College of the Redwoods, Hoopa Valley Tribe, California
Fetzer, John Ward, North Dakota State University, Minnesota Chippewa Tribe, Minnesota, (White Earth Band)
Finkbonner, Miriam Ann, North Dakota State University, Lummi Tribe of the Lummi Reservation, Washington
Fish, Renita Lashell, University of Oklahoma, Health Science Center, Muscogee (Creek) Nation, Oklahoma
Fisher, Joe Keith, University of New Mexico, College of Pharmacy, Choctaw Nation of Oklahoma
Fishinghawk, Bobbi Genevieve, University of Kansas, School of Medicine, Cherokee Nation, Oklahoma
Foster, Melvin Dale, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Franklin, Richard Arnold, University of Missouri, Cherokee Nation, Oklahoma
Frankovic, Adam Matthew, Central Washington University, Cherokee Nation, Oklahoma
Fredy, Jefferson, University of New Mexico, College of Pharmacy, Navajo Nation, Arizona, New Mexico, & Utah
Freeland-Sam, Veronica Marie, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
French, Zachary Ashton, University of Oklahoma, Cherokee Nation, Oklahoma
Friede, Priscilla Jenee, Montana State University-Northern, Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Frizzell, Felicia Yelena, Loyola College, Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Gamble-Sampson, Wanda, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Gardner, Angela Danita, Rogers State College, Cherokee Nation, Oklahoma
Gardner, Jaquita Yvonne, Connors State College, Cherokee Nation, Oklahoma
Garner, Laquita Jo, Great Plains Technology, Mississippi Band of Choctaw Indians, Mississippi
Gerry, Jon Michael, Stanford University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Gerry, Ryan Richard, Harvard Medical School, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Giles, Erin Ayn, Southern College of Optometry, Cherokee Nation, Oklahoma
Girty, Logan Ellis, University of Oklahoma, Caddo Indian Tribe of Oklahoma
Glass, Kerri Lynn, Rose State College, Muscogee (Creek) Nation, Oklahoma
Glasses, Devin Garrick, Arizona School of Health Sciences, Navajo Nation, Arizona, New Mexico, & Utah
Gonzales, Nicolle Lenn, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Gorman, Emmeline Paula, Mesa Community College, Navajo Nation, Arizona, New Mexico, & Utah
Gourneau, Erica Renee, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Granger Nez, Sharon, Coconino County Community College, Navajo Nation, Arizona, New Mexico, & Utah
Greenwood, Tami Lynette, East Central University, Choctaw Nation of Oklahoma
Grey, Michael, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Groten, Eric Dartanium, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Gust, Kateri Lyn, Montana State University, School of Nursing, Crow Tribe of Montana
Guy, Melissa, University of Colorado, Health Science Center, Navajo Nation, Arizona, New Mexico, & Utah
Haddox, Natalie Rose, Stanford University, Cherokee Nation, Oklahoma
Hall, Megan Sue, University of Oklahoma Health Science Center, Choctaw Nation of Oklahoma
Hall, Sheila Marie, Loyola College, Minnesota Chippewa Tribe, Minnesota (White Earth Band)
Hamby, Kenneth Jerome, Kirksville College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Hammons, Tracie Janene, Connors State College, Cherokee Nation, Oklahoma
Harjo, Sheila Renna, East Central Oklahoma State University, Santee Sioux Nation, Nebraska
Harker, Erica Michelle, University of New Mexico, College of Pharmacy, Zuni Tribe of the Zuni Reservation, New Mexico
Harrington, Latoya Ann, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Harris, Elizabeth Kate, Oklahoma State University, College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Harris, Lynn Marie, North Carolina State University, Lumbee Tribe of North Carolina
Harrison, Geniel, University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana
Harrison, Gilbert, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Harrison, Lisa Lizette, University of Wisconsin, Stevens Point, Ho-Chunk Nation of Wisconsin
Hass, Melisa Jane, Rogers State College, Cherokee Nation, Oklahoma
Hassen, Kathleen Lois, Kalamazoo Valley Community College, Sault St. Marie Tribe of Chippewa Indians of Michigan
Hawley, Edward Carl, Montana State University-Bozeman, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Hayes, Deandra Brooke, Northeastern State University, Cherokee Nation, Oklahoma
Headdress, Gale Crystal, Montana State University-Northern, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana
Henderson, Michelle Lynn, University of Texas, Navajo Nation, Arizona, New Mexico, & Utah
Henson, Mike Allen, University of Oklahoma, Health Science Center, Comanche Nation, Oklahoma
Herder, Katrina Joy, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Hick, Carrie, University of New Mexico, College of Pharmacy, Navajo Nation, Arizona, New Mexico, & Utah
Hicklin, Cheryl, Winston-Salem State University, Seneca Nation of New York
Hicks, Tana Lee, Oklahoma Baptist University, Seminole Nation of Oklahoma
Holland, Toni Jean, Georgia Perimeter College, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Hollow-Lee, Collette Caroline, Heritage College, Confederated Tribes of the Colville Reservation, Washington
Holman, Colin Justin, University of Oklahoma, Chickasaw Nation, Oklahoma
Hopkins, Delbert Samuel, University of North Dakota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Houle, Jay Powell, Montana State University, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Houston, Lindsay Nicole, Northeastern State University, Cherokee Nation, Oklahoma
Howell, Jesse Ray, University of Central Oklahoma, Choctaw Nation of Oklahoma
Howeya, Lori Ann, University of New Mexico, Pueblo of Acoma, New Mexico
Hubbell, Nicholl Kristen, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Hubbell, Rochelle Lynne, University of Arizona, San Carlos Apache Tribe of the San Carlos Reservation, Arizona
Huerth, Benjamin Walter, University of Vermont, College of Medicine, Winnebago Tribe of Nebraska
Hulsey, Heidi Lynne, Portland Community College, Lummi Tribe of the Lummi Reservation, Washington
Humphreys, Christina Lilly, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Hunt, Matthew Hensdale, North Carolina State University, Lumbee Tribe of North Carolina
Hunter, Misty Rae, South Dakota State University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Hyatt, Jacqueline Brooke, University of Oklahoma, Muscogee (Creek) Nation, Oklahoma
Hyden, Andreana Dee, Grand Canyon College, Navajo Nation, Arizona, New Mexico, & Utah
Inlow, Aaron Dewayne, Oklahoma State University, Cherokee Nation, Oklahoma

Jackson, Candy Lou, Idaho State University, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Jackson, Gillian Joseph, California State University, Pinoleville Rancheria of Pomo Indians of California
Jackson, Melissa Sue, Northeastern Oklahoma A&M College, Eastern Shawnee Tribe of Oklahoma
James, Darrel Deon, Mountain View College, Choctaw Nation of Oklahoma
James, Jessica Natasha, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
James, Wendi Lee Ann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Janis, Fawn Renee, Ogalala Lakota College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Jefferson, Deloris Ann, Murray State College, Chickasaw Nation, Oklahoma
Jefferson, Natalie Ruth, University of Kansas, School of Social Welfare, Choctaw Nation of Oklahoma
Jemewouk, Jeanne M., University of Alaska, School of Nursing, Native Village of Elim
Jensen, Janelle Blake, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah
Joe, Felma Marie, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Joe, John, Gateway Community College, Navajo Nation, Arizona, New Mexico, & Utah
Johnson, Elizabeth Jane, Central Oregon Community College, Confederated Tribes of the Warm Springs Reservation of Oregon
Johnson, Gini Azure, University of New Mexico-Albuquerque, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana
Johnson, Joyce-Melvina, Northeastern State University, Cherokee Nation, Oklahoma
Johnson, Kimberlee Jo, East Central University, Chickasaw Nation, Oklahoma
Johnson, Lincoln Scott, Northland Pioneer College, Navajo Nation, Arizona, New Mexico, & Utah
Johnson, Melanie Noelle Pearl, University of Alaska, Orutsararmuit Native Village
Johnson, Yolanda, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Joice, Kara Lynn, University of Kansas, Cherokee Nation, Oklahoma
Jones, Jodi Michele, University of Oklahoma, Health Science Center, Pawnee Nation of Oklahoma
Jones, Julia M., Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Joseph, Ruth, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Julian, Serena Yazzie, University of New Mexico, College of Pharmacy, Navajo Nation, Arizona, New Mexico, & Utah
Kanuho, Daryl, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Kardonsky, Kimberly Jay, Medical College of Wisconsin, Jamestown S'klallam Tribe of Washington
Karlin, Emilie Owens, Seattle Pacific College, Cherokee Nation, Oklahoma
Keel, Andrea Lynn, University of Oklahoma, Chickasaw Nation, Oklahoma
Keener, Brandy Michelle, Oklahoma State University, Cherokee Nation, Oklahoma
Keepseagle, Richard Joseph, Bismark State College, Standing Rock Sioux Tribe of North & South Dakota
Kelley, Ralph Zane, University Health Sciences College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Kelliher, Allison Miranda, University of Washington, Nome Eskimo Community
Keplin, Angela Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Kessler, Jill Daye, University of Minnesota, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Ketcher, Jeremy Wayne, Connors State College, Cherokee Nation, Oklahoma
Kewenvoyouma, Vachel Rebecca, Yavapai College, Navajo Nation, Arizona, New Mexico, & Utah
Kickingbird, Lauren Marie, University of Central Oklahoma, Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
King, Taleah Rae, Langston University, Choctaw Nation of Oklahoma
Kinlecheenie, Orlinda Lou, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Kinney, Sahar Amelia, Tufts University, Turtle Mountain Band of Chippewa Indians of North Dakota
Kirk, Brant Evan, Oregon Institute of Technology, Klamath Indian Tribe of Oregon
Kirk, John Vincent, Oklahoma State University, College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Kramer, Erin Lea, University of Oklahoma, Cherokee Nation, Oklahoma
Lafromboise, Sandy Marie, Minot State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Landers, Joseph Henry, University of Oklahoma, Muscogee (Creek) Nation, Oklahoma
Lang, Sharon W., Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Lashley, Nathan James, Chicago Medical School, Scholl College of Podiatric Medicine, Cherokee Nation, Oklahoma
Laurence, Kami Lynn, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Lawrence, Gary Lynn, Northeastern State University, Choctaw Nation of Oklahoma
Lay, Pamela Christine, University of Phoenix, Muscogee (Creek) Nation, Oklahoma
Leach, Lisammechelle, Connors State College, Cherokee Nation, Oklahoma
Leader Charge, Lila Rose, Ogalala Lakota College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Lee, Calbert Aaron, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Lee, Cheryl Lynn, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Lee, Colleen Linda, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Leekity, Marilyn Kelley, University of New Mexico-Gallup, Navajo Nation, Arizona, New Mexico, & Utah
Leemhuis, Stephanie Brook, University of Oklahoma, Cherokee Nation, Oklahoma
Legarde, Victoria Leann, Gonzaga University, Arapahoe Tribe of the Wind River Reservation, Wyoming
Leisholmn, Jody Janiece, University of Washington, Metlakatla Indian Community, Annette Island Reserve
Lemas, Dominick Joseph, University of Vermont—Burlington, Citizen Potawatomi Nation, Oklahoma
Lesansee, Amanda Gayle, University of New Mexico, Zuni Tribe of the Zuni Reservation, New Mexico
Lessert, Amanda Kaye, Creighton University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Lewelling, Brian Lynn, Tulane University, Health Science Center, Cherokee Nation, Oklahoma
Limpy, Cheyenne Rose, Montana State University, School of Nursing, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Litfin-Salt, Miriam Fae, Kansas State University, Navajo Nation, Arizona, New Mexico, & Utah
Lomay, Vicky Tsinnijinnie, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Long, Christina Marie, University of South Dakota, Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Longhorn, Kaselyn Diane, East Central University, Absentee-Shawnee Tribe of Indians of Oklahoma
Longie, Michelle Renee, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Looney, Joshua Carson, University of Oklahoma Dental School, Cherokee Nation, Oklahoma
Lopez, Candace Erin, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Lopez, Matthew Adam, Kansas State University, Walker River Paiute Tribe of the Walker River Reservation, Nevada
Lowery, Brad Elliott, North Carolina State University, Lumbee Tribe of North Carolina
Luedecke, James Anthony, University of Arkansas, Cherokee Nation, Oklahoma
Lujan, Erica Leanne, University of New Mexico, College of Pharmacy, Pueblo of Isleta, New Mexico
Madden, Donna Rose, Florida Hospital, College of Health Sciences, Choctaw Nation of Oklahoma
Makai, Myra Demetria, University of New Mexico, Gila River Indian Community of the Gila River Indian Reservation, Arizona
Malemute, Charlene Louise, Washington State University, Alaska Native
Maloney, Violet Spring, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Marshall, Kristian Evan, Northeastern State University, Cherokee Nation, Oklahoma

Martin, Carmelita A., University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Martinez, Alicia Rose, University of North Dakota, Yurok Tribe of the Yurok Reservation, California
Martinez, Kimberly Ann, Northeastern Oklahoma A&M College, Eastern Shawnee Tribe of Oklahoma
Martinez, Leah M., University of New Mexico-Albuquerque, Pueblo of Acoma, New Mexico
Martinez, Loretta Ann, University of Denver, School of Social Work, Navajo Nation, Arizona, New Mexico, & Utah
Mason, Laquita Joy, University of Montana, School of Pharmacy, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Matt, Georgia Lee, Utah State University, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Maxon, Jeff Allen, North Dakota State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
May, Katie Lynn, University of Oklahoma, Cherokee Nation, Oklahoma
Mayes, Nicole Rachel, University of Oklahoma, Cherokee Nation, Oklahoma
McCabe, Devon Aurora, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
McCorkle, Cody W., University of Arkansas-Fayetteville, Citizen Potawatomi Nation, Oklahoma
McGeshick, Cole David, Montana State University, Sokaogon Chippewa Community, Wisconsin
McGhee, Julie Lynette, University of Oklahoma, Health Science Center, Poarch Band of Creek Indians of Alabama
McGilbary, Kristie Rae, University of Oklahoma, Health Science Center, Kiowa Indian Tribe of Oklahoma
McGlothin, Travis Michael, Harvard Medical School, Pueblo of Laguna, New Mexico
McKerry, Jason Amel, University of Arizona, College of Medicine, Navajo Nation, Arizona, New Mexico, & Utah
McLain, Stefanie Jeanne, Oklahoma State University, Cherokee Nation, Oklahoma
McNeal, Rebecca Lynne, University of Oklahoma, Health Science Center, Choctaw Nation of Oklahoma
Meeks, Alicia Ann, East Central State University, Chickasaw Nation, Oklahoma
Meeks, Bridget Mae, University of Montana, Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Meisenheimer, Rae Ann, Rogers State College, Cherokee Nation, Oklahoma
Melkus, Edwina Mae, Montana State University School of Nursing, Crow Tribe of Montana
Mellon, Travis James, University of the Health Sciences College, Pueblo of Zia, New Mexico
Menka, Nazune Meega, Santa Monica College, Koyukuk Native Village
Merrell, Jonathan, Bartlesville Wesleyan College, Cherokee Nation, Oklahoma
Miller, Carl Eugene, Chicago Medical School, Scholl College of Podiatric Medicine, Muscogee (Creek) Nation, Oklahoma
Miller, Jacklyn Jean, University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Miller, Michella Lynn, Connors State College, Cherokee Nation, Oklahoma
Miller, Priscilla Jean, University of Alaska, Agdaagux Tribe of King Cove
Mittelstedt, Richard L., Idaho State University, Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Monette, Eugene Louis, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Moore, Anna Rose, University of Alaska, School of Nursing, Native Village of Elim
Moran, Bradley Alan, University of Montana, School of Pharmacy, Turtle Mountain Band of Chippewa Indians of North Dakota
Morgan, Heidi Elizabeth, Arizona School of Health Sciences, Muscogee (Creek) Nation, Oklahoma
Morin, Georgia Maria, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Morin, Rebecca Inez, Idaho State University, Arapahoe Tribe of the Wind River Reservation, Wyoming
Morris, Winifred, University of New Mexico-Gallup, Navajo Nation, Arizona, New Mexico, & Utah
Morrison, Clint Justin, University of Oklahoma, Choctaw Nation of Oklahoma
Morrison, Gerlinde Maria, University of Montana, Crow Tribe of Montana
Mousseau, Francine Louise, University of South Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Murphy, Brandy Fay, University of Nevada-Las Vegas, Houlton Band of Maliseet Indians of Maine
Murray, Ais Kerry William, University of Colorado, Shoshone Tribe of the Wind River Reservation, Wyoming
Murray, Carl Arthur, University of Oklahoma, Health Science Center, Choctaw Nation of Oklahoma
Muskett, Eunice Annazbah, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Nadeau, Shawn Rochelle, Viterbo College, Turtle Mountain Band of Chippewa Indians of North Dakota
Nahno-Kerchee, Walter Jay, University of Oklahoma, Health Science Center, Comanche Nation, Oklahoma
Nanez, Jennifer Sims, University of New Mexico, Pueblo of Acoma, New Mexico
Nephew, Lesley Ellen, SUNY at Buffalo School of Social Work, Seneca Nation of New York
Nicholson, Kasey Joseph, Montana State University, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Nicks, Deanna Marie, Pima Medical Institute—Mesa, Hopi Tribe of Arizona
Nidiffer-Shelor, Amber Lynn, University of Oklahoma, Health Science Center, Cherokee Nation, Oklahoma
Nilchee, Gregory Hashke Yitahoogal, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Nimsey, Dallas Micah, Southwestern Oklahoma State University, Kiowa Indian Tribe of Oklahoma
Norton, Elizabeth Marie, Eastern Oregon University, Confederated Tribes of the Siletz Reservation, Oregon
O'Neal, Jaime Diane, Northern State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Odaye, Deena May, Grand Canyon College, Reno-Sparks Indian Colony, Nevada
Old Elk, Georgianna W., American University, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana
Oldacre, Angela Marie, University of Oklahoma, Health Science Center, Cherokee Nation, Oklahoma
Olic, Latona Michelle, University of Wyoming, School of Pharmacy, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Oliver, Jody Ann, Boise State University, Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Oosahwe, Christen Brook, Bacone College, Cherokee Nation, Oklahoma
Ortiz, Lisa Dianne, Wayne State University, School of Medicine, Cherokee Nation, Oklahoma
Osborn, Katie D., Southeastern Oklahoma State University, Cherokee Nation, Oklahoma
Owens, Johnnie Louis, Kirksville College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Oxford, Dustin Joseph, Northeastern State University, Cherokee Nation, Oklahoma
Pappan, Cynthia Rae, Creighton University, School of Pharmacy, Turtle Mountain Band of Chippewa Indians of North Dakota
Parker, Mahate Ann, East Central University, Comanche Nation, Oklahoma
Parker, Rahnia Jean, University of Alaska System, Native Village of Kipnuk
Paul, Kimberly Lynn, University of Montana, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Pecoss, Susanna Elizabeth, University of New Mexico-Albuquerque, Pueblo of Cochiti, New Mexico
Peltier, Heather, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Peone-Haynes, Amanda Lee, American Health Information Management Association, Confederated Salish & Kootenai of the Flathead Reservation, Montana
Peratrovich, Valene Maria, Oregon State University, Alaska Native
Pereira, Christina Charlene Bell, University of Arizona, Tohono O'odham Nation of Arizona
Pete, Lyle Henry, Mesa Community College, Navajo Nation, Arizona, New Mexico, & Utah
Peterman, Sawyer, Dine College, Navajo Nation, Arizona, New Mexico, & Utah
Phillips, Cara Leigh, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah
Phillips, Crystal Lea, University of Oklahoma, School of Dentistry, Cherokee Nation, Oklahoma
Platta, Veralyn, New Mexico State University, Mescalero Apache Tribe of the Mescalero Reservation, New Mexico

Pleasants, Tina Marie, Washington State University, Central Council of Tlingit & Haida Indian Tribes
Pletnikoff, Elise Marie, Carroll College, Alaska Native
Poe, Jill R., Northeastern State University, Osage Tribe, Oklahoma
Power, Jacob Alan, Midwestern University, Cherokee Nation, Oklahoma
Price, Aaron Joseph, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Proctor, Andrea Nicole, East Central State University, Muscogee (Creek) Nation, Oklahoma
Ramone, Bernadette Nina, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Rasor, Joseph James, Midwestern University, Navajo Nation, Arizona, New Mexico, & Utah
Razote, Antoinette Jo, Central Washington University, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Redcorn, Moira Ambrose, University of Oklahoma, Osage Tribe, Oklahoma
Redsteer, Sandra Jeanette, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Reising, Kotanee Tenas, Medical College of Wisconsin, Menominee Indian Tribe of Wisconsin
Renfrow, Miranda Kirstin, Oklahoma State University, College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Rice, Lily A., University of North Dakota, Prairie Band of Potawatomi Nation, Kansas
Richan, Eilene Faye, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Richards, Spencer L., University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Richardson, Charlene Martha, South Dakota State University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Ringer-Knudson, Nicolette Jean, University of Minnesota, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Robideau, Eileen Catherine, University of Alaska, Nenana Native Association
Robinson, Charlene, University of Arizona, College of Medicine, Navajo Nation, Arizona, New Mexico, & Utah
Robison-Rivera, Kristie Marie, Southwestern Oklahoma State University, Apache Tribe of Oklahoma
Rogers, Brandon Scott, University of Oklahoma, School of Dentistry, Cherokee Nation, Oklahoma
Romero, Teresa Beth, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Roselius, Kassi, Bethany Nazarene College, Citizen Potawatomi Nation, Oklahoma
Rouillard, Allison Marie, University of North Dakota, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Rouse, Brant Philip, University of Oklahoma Dental School, Cherokee Nation, Oklahoma
Rowell, Eric Habenachi, Eastern Oklahoma State College, Choctaw Nation of Oklahoma
Ruleford, Miranda Louisa, University of Tulsa, Cherokee Nation, Oklahoma
Sahmaunt, Marcia Ann, University of Oklahoma, Kiowa Indian Tribe of Oklahoma
Salois-Albert, Shaunda Marie, Salish Kootenai College, Confederated Salish & Kootenai of the Flathead Reservation, Montana
Sanders, Michael Shawn, University of Oklahoma, Health Science Center, Cherokee Nation, Oklahoma
Sanderson, Kendra Marie, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah
Sawney, Laura Renee, Northeastern State University, Cherokee Nation, Oklahoma
Schmidt, Erin Michelle, University of Oklahoma Dental School, Muscogee (Creek) Nation, Oklahoma
Scott, Jessica Robin, University of Washington, School of Medicine, Central Council of Tlingit & Haida Indian Tribes
Scott, Steven Ray, University of Arizona, College of Medicine, Cherokee Nation, Oklahoma
Seyler, Debra Jean, Northern Arizona University, Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Shangin, Nicole Danielle, Seattle Pacific University, Ivanoff Bay Village
Shawano, Tina Marie, University of Wisconsin, Menominee Indian Tribe of Wisconsin
Shelley, Amanda Elaine, Bacone College, Cherokee Nation, Oklahoma
Shepard, Cristopher Allan Joseph, University of Nevada, Las Vegas School of Dentistry, Santee Sioux Nation, Nebraska
Shinn-Jones, Darcy Marie, Northeastern State University, Cherokee Nation, Oklahoma
Show, Jennifer Aurice, Montana State University, School of Nursing, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Show, Michelle, University of Washington, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Silvers, Kristin Gail, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Sirany, Anne-Marie Elizabeth, Boston University, Minnesota Chippewa Tribe, Minnesota (White Earth Band)
Sirmans, Jayna Deneice, University of Houston, College of Optometry, Choctaw Nation of Oklahoma
Sixkiller, Cheryl Lynn, Northeastern State University, Cherokee Nation, Oklahoma
Skaggs, Amanda Marie, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Skeet, Johnnette, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Slyker, Amanda Coleen, Macalester College, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Smith, Dallas Rockford, Midwestern University, Navajo Nation, Arizona, New Mexico, & Utah
Smith, Eliza-Mae C., Bacone College, United Keetoowah Band of Cherokee Indians of Oklahoma
Smith, Janiece Rene, University of Arizona, Navajo Nation, Arizona, New Mexico, & Utah
Smith, Seneca Martin, University of Oklahoma, Health Science Center, Muscogee (Creek) Nation, Oklahoma
Spears, Raina Ann, Oklahoma State University, Choctaw Nation of Oklahoma
Spencer, Amanda Stephanie, Bacone College, Cherokee Nation, Oklahoma
Spencer, Anne P., University of New Mexico-Gallup, Navajo Nation, Arizona, New Mexico, & Utah
Spoon, Shawna Francene, University of Oklahoma, Sac & Fox Nation, Oklahoma
St Claire, Billie Jo, North Dakota State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Starr, Daniel Curtis, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Stewart, Rodney Shane, Rogers State College, Cherokee Nation, Oklahoma
Still, Melissa Brook, University of Central Arkansas, Cherokee Nation, Oklahoma
Stone, Jennifer June, Northeastern State University, Choctaw Nation of Oklahoma
Stone, Meghan Brooke, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Stump-King, Glynna Marie, University of Phoenix, Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Sun Rhodes, Neil Altair, Oregon Health Sciences University, Arapahoe Tribe of the Wind River Reservation, Wyoming
Swank, Selma Jean, Salish Kootenai College, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Sweeney, Michael Aaron, Brigham Young University, Choctaw Nation of Oklahoma
Tapahe, Sharon Jean, Brigham Young University, Navajo Nation, Arizona, New Mexico, & Utah
Tapp, Jamie Lynn, Southwestern Oklahoma State University, Chickasaw Nation, Oklahoma
Tawyesva, Yolanda Lei, Northland Pioneer College, Hopi Tribe of Arizona
Taylor, Jennifer Elise, Portland State University, Pit River Tribe, California (XL Ranch)
Ten Fingers, Javan Anthony, John F. Kennedy University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Thomas, Curtiss Lee, Northwest Technical College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thomas, Jacob Frederick, Concordia College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thompson, Benjamin Campbell, Northeastern State University, Cherokee Nation, Oklahoma
Thompson, Jennifer Lynn, Western Carolina University, Eastern Band of Cherokee Indians of North Carolina
Thompson, Lula Morris, Northland Pioneer College, Navajo Nation, Arizona, New Mexico, & Utah
Thompson, Paula Gail, Gateway Community College, Navajo Nation, Arizona, New Mexico, & Utah
Thompson, Stacey Marie, University of New Mexico, College of Pharmacy, Navajo Nation, Arizona, New Mexico, & Utah
Thompson, Toshina Krystal, Fort Lewis College, Navajo Nation, Arizona, New Mexico, & Utah

Thompson, Weston Dewey, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Tiger, Brandy Susan, Arizona School of Health Sciences, Muscogee (Creek) Nation, Oklahoma
Tillman, Amy Beth, University of Central Oklahoma, Choctaw Nation of Oklahoma
Toadlena, Evelyn, Western New Mexico University, Navajo Nation, Arizona, New Mexico, & Utah
Todicheeney, Sharon Ann, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Tom, Ardith Renee, New Mexico State University, Navajo Nation, Arizona, New Mexico, & Utah
Tom, Jennifer Michell, Hunter College, Choctaw Nation of Oklahoma
Torralba, Vernon Charles, College of St. Scholastica, Crow Tribe of Montana
Torres, Michelle Lynn, Heritage College, Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Townsend, Travis J., University of New Mexico-Albuquerque, Pueblo of Acoma, New Mexico
Toya, Alleyne N., TVI Community College, Pueblo of Laguna, New Mexico
Trombley, Diana Lynn, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Tsethlikai, Tami-Denice, University of New Mexico-Albuquerque, Zuni Tribe of the Zuni Reservation, New Mexico
Tso, Jennifer Lynn, University of Washington, Navajo Nation, Arizona, New Mexico, & Utah
Tso, Vera Jane, University of New Mexico-Gallup, Navajo Nation, Arizona, New Mexico, & Utah
Tsosie, Roberta Ann, Long Technical College, Navajo Nation, Arizona, New Mexico, & Utah
Turney, Jarett Brandon, Marquette University Dental School, Cherokee Nation, Oklahoma
Tutt, Jaclyn Cindy, Phoenix College, Navajo Nation, Arizona, New Mexico, & Utah
Tveit, Adrienne Hilda, Washington State University College, Central Council of Tlingit & Haida Indian Tribes
Two Bulls, Tanya Jolette, Ogalala Lakota College, Standing Rock Sioux Tribe of North & South Dakota
Tyler, Holly Kristina, University of South Carolina, Lumbee Tribe of North Carolina
Uhl, Sarah Elizabeth, Baylor University, Cherokee Nation, Oklahoma
Ulmer, Chanda Gail, Humboldt State University, Yurok Tribe of the Yurok Reservation, California
Underwood, Eugenia Raeann, East Central Oklahoma State University, Mississippi Band of Choctaw Indians, Mississippi
Valdo, Gerald David, Colorado State University, Pueblo of Acoma, New Mexico
Vallie-Merriefield, Pamela Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Van Winkle, Tom R., Trinity Christian College, Navajo Nation, Arizona, New Mexico, & Utah
Vargas, Raquel Ann, University of Texas Medical Branch at Galveston, Choctaw Nation of Oklahoma
Varnell, Cassidy Gertrude, Connors State College, Cherokee Nation, Oklahoma
Vaughn, Ashley Elizabeth, University of Oklahoma, Cherokee Nation, Oklahoma
Velasquez, Mary Christina, Arizona School of Health Sciences, Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, and Utah
Vincent, Terence Justin, Scholl College of Podiatric Medicine, Kiowa Indian Tribe of Oklahoma
Vlasoff, Martha Jay, University of Alaska-Anchorage, Native Village of Eyak (Cordova)
Walker, Jonathan Bayless, Oklahoma State College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Walker, Lindsay Allison, University of North Carolina, Eastern Band of Cherokee Indians of North Carolina
Walker, Patrick Robert, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Wallace, Becky Lee, College of St. Catherine, Winnebago Tribe of Nebraska
Wallace, Kacey Leann, Oklahoma State College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Walters, Tamara Renee, University of Alaska, Alaska Native
Ward, Jennifer Elaine, Kirksville College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Ward, Rolanda Reason, University of Alaska-Anchorage, Egegik Village
Warlick, Katie Larue, University of Oklahoma, Cherokee Nation, Oklahoma
Washburn, Kendall Derek, University of Oklahoma, Health Science Center, Kiowa Indian Tribe of Oklahoma
Wasin Zi, Fawn Catherine, University of Maryland, Standing Rock Sioux Tribe of North & South Dakota
Watts, Candace Summerz, Sweet Briar College, Navajo Nation, Arizona, New Mexico, & Utah
Werner, Gwenlynn Laine, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
West, Jonathan Lee, Northeastern State University, Cherokee Nation, Oklahoma
White, Erin Janet, University of North Carolina, Lumbee Tribe of North Carolina
White, Karen Ann, Apollo College, Navajo Nation, Arizona, New Mexico, & Utah
Whitehair, Orlantha, University of Arizona College of Medicine, Navajo Nation, Arizona, New Mexico, & Utah
Whitehair, Robbie Gayle, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Whitehorse, Veronica Ann, San Diego State University, Navajo Nation, Arizona, New Mexico, & Utah
Widmyer, Janet May, University of Alaska, Ketchikan Indian Corporation
Wilbourn, Crystal Lea, Belmont University, Cherokee Nation, Oklahoma
Wiley, Matthew Hallett, East Central University, Muscogee (Creek) Nation, Oklahoma
Wilkerson, Thaddus Donavan, University of New Mexico, College of Pharmacy, Navajo Nation, Arizona, New Mexico, & Utah
Willcuts, Peggy Sue, South Dakota State University College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Williams Burns, Amanda Kate, Southwestern Oklahoma State University, Muscogee (Creek) Nation, Oklahoma
Williams, Alice, Northland Pioneer College, Navajo Nation, Arizona, New Mexico, & Utah
Williams, Clarrisa, University of Arizona, College of Medicine, Navajo Nation, Arizona, New Mexico, & Utah
Williams, Scott Bradley, Northeastern State University, Cherokee Nation, Oklahoma
Wilson, Chase Te, Southeastern Oklahoma State University, Choctaw Nation of Oklahoma
Wilson, Ellen Lucille, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Wilson, Kelli Rae Lee, University of New Mexico-Albuquerque, Seminole Nation of Oklahoma
Windham, Tera Beth, Northeastern State University, Cherokee Nation, Oklahoma
Winship, Venita Lynn, Eastern Oklahoma State College, Choctaw Nation of Oklahoma
Winton, Lindsay Dallas, University of Oklahoma, Health Science Center, Cherokee Nation, Oklahoma
Wiseman, Toni Jeanne, Oklahoma City University, Muscogee (Creek) Nation, Oklahoma
Wood, Chad Nathaniel, University of Utah, College of Medicine, Cherokee Nation, Oklahoma
Woodard, David Rush, University of Missouri, Osage Tribe, Oklahoma
Woodruff, Patience M., University of South Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Woods, Lacy Ann, University of Oklahoma, Health Science Center, Chickasaw Nation, Oklahoma
Worker-Geiger, Shanna Renee, Arizona School of Health Sciences, Navajo Nation, Arizona, New Mexico, & Utah
Yandell, Seth David, University of Texas Medical Branch-Galveston, Choctaw Nation of Oklahoma
Yarbrough, Latasha Renee, Rose State College, Cheyenne-Arapaho Tribes of Oklahoma
Yazzie, Carmelita Jean, University of New Mexico-Gallup, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Charisse Lindsey, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Maria, University of New Mexico, College of Pharmacy, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Nazhone Paul, University of Arizona College of Medicine, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Olivia, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Sharon, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Shelia Rae, Northern Arizona University, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie, Shihomi Rae, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah

Yazzie, Vangie Mae, University of New Mexico-Albuquerque, Navajo Nation, Arizona, New Mexico, & Utah
Yazzie-Francisco, Myra Lynn, Phoenix College, Navajo Nation, Arizona, New Mexico, & Utah
Yellowhair, Jeannine Ann, New Mexico State University, Navajo Nation, Arizona, New Mexico, & Utah
Yellowhair, Ophelia Ann, University of New Mexico, Navajo Nation, Arizona, New Mexico, & Utah
Yepa, Jason Charles, University of New Mexico-Albuquerque, Navajo Tribe Arizona, New Mexico, & Utah
Young, Sawar Chalutch, University of Washington, Yurok Tribe of the Yurok Reservation, California
Youngblood, Chase Culver, University of Oklahoma, Cherokee Nation, Oklahoma
Zackery, Kathryn Sue, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma
Zah, Angela Marie, University of Colorado, Health Science Center, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Zahne, Janis Ivy, Arizona State University, Navajo Nation, Arizona, New Mexico, & Utah
Zuni, Angelica Celeste, Fort Lewis College, Pueblo of Isleta, New Mexico
Zunie, Victoria Cassandra, University of New Mexico-Albuquerque, Zuni Tribe of the Zuni Reservation, New Mexico
Zwaryck, Shelby Leona, University of Montana, School of Pharmacy, Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Zwaryck, Toni Marie, Salish Kootenai College, Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone: (301) 443–6197, fax: (301) 443–6048.

Dated: April 19, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Grant Program; New Discretionary Funding Cycle for Fiscal Year 2005

Funding Opportunity Number: HHS–IHS–TMG–2005–0001.
CFDA Number: 93.228.

Key Dates:

Training: May 24–28, 2004; June 23–24, 2004; July 7–8, 2004; and July 21–22, 2004.

Application Deadline: August 20, 2004.

Application Review Dates: October 18–22, 2004.

Application Notification: First week of December 2004.

Anticipated Award Start Date: January 1, 2005.

Program Authority: Public Law 93–638, sections 103(b)(2) and 103(e), Indian Self-Determination and Education Assistance Act, as amended.

I. Funding Opportunity Description

The Tribal Management Grant (TMG) Program is a national competitive discretionary grant program established to assist federally-recognized tribes and tribally-sanctioned tribal organizations in assuming all or part of existing Indian Health Service programs, services, functions, and activities (PSFA) through a Title I contract and to assist established Title I contractors and Title V compactors to further develop and improve their management capability. In addition, TMGs are available to tribes/tribal organizations under the authority of Public Law (Pub. L.) 93–638 section 103(e) for (1) obtaining technical assistance from providers designated by the tribe/tribal organization (including tribes/tribal organizations that operate mature contracts) for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management and the development of cost allocation plans for indirect cost rates; and (2) planning, designing, and evaluating Federal health programs serving the tribe/tribal organization, including Federal administrative functions. These grants are established under the authority of section 103(b)(2) and section 103(e) of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended.

Funding Priorities: The IHS has established the following funding priorities for TMG awards. The funding of approved Priority I applicants will occur before the funding of approved Priority II applicants. Priority II applicants will be funded before approved Priority III applicants. Funds will be distributed until depleted.

- *Priority I*—Any Indian tribe that has received Federal recognition (restored, unterminated, funded, or unfunded) within the past 5 years.
- *Priority II*—All other eligible federally-recognized Indian tribes or tribally-sanctioned tribal organizations submitting a competing continuation application or a new application with the sole purpose of addressing audit material weaknesses identified in Attachment A (Summary of Findings and Recommendations) and other attachments, if any, of the transmittal letter received from the Office of the Inspector General, National External Audit Review (NEAR) Center, Department of Health and Human Services. Please identify by underlining the weakness to be addressed on Attachment A. Please refer to section III.3, ''Other Requirements'' for more information regarding Priority II Participation.
- *Priority III*—All other eligible federally-recognized Indian tribes or tribal organizations submitting a competing continuation application or a new application.

II. Award Information

Type of Instrument: Grant.

Estimated Funds Available: The estimated amount of funds available, based on the Administration's request for the TMG Program, is $2,276,000 in Fiscal Year (FY) 2005. There will be only one funding cycle in FY 2005.

Anticipated Number of Awards: This estimated amount is anticipated to fund approximately 20–25 new and continuation awards.

Project Periods: Varies from 12 months to 36 months. Please refer to ''Eligible Project Types, Maximum Funding, and Project Periods'' below for more detailed information.

Estimated Range of Awards: $50,000/year–$100,000/year. Please refer to ''Eligible Project Types, Maximum Funding, and Project Periods'' below for more detailed information.

Eligible Project Types, Maximum Funding and Project Periods: Applications submitted must be for only one project type. The TMG Program consists of four types of projects: (1) Feasibility studies, (2) planning, (3) evaluation studies, and, (4) health management structure development or improvement. Applications that address more than one project type will be considered ineligible and will be returned to the applicant. The maximum funding level noted below includes both direct and indirect costs. Application budgets which exceed the maximum funding level or project period identified for a project type will not be reviewed. Please refer to section IV.5. ''Funding Restrictions'' for further information regarding ineligible activities.

A. Feasibility Study—(Maximum funding/project period: $70,000/12 months). A study of a specific IHS program or segment of a program to determine if Tribal management of the program is possible. The study shall present necessary plans, approach,

training, and resources required to assume Tribal management of the program. The study shall include the following four components:

- Health needs and health care services assessments that identify existing health care services and delivery system, program divisibility issues, health status indicators, unmet needs, volume projections, and demand analysis.
- Management analysis of existing management structures, proposed management structures, implementation plans and requirements, and personnel staffing requirements and recruitment barriers.
- Financial analysis of historical trends data, financial projections and new resource requirements for program management costs, and analysis of potential revenues from Federal/non-Federal sources.
- Decision statement/report that incorporates findings, conclusions, and recommendations; the presentation of the study and recommendations to the governing body for tribal determination regarding whether tribal assumption of program(s) is desirable or warranted.

B. Planning—(Maximum funding/project period: $50,000/12 months). A collection of data to establish goals and performance measures for the operation of current health programs or anticipated PSFAs under a Title I contract. Planning will specify the design of health programs and the management systems (including appropriate policies and procedures) to accomplish the health priorities of the tribe/tribal organization. For example, planning could include the development of a Tribal Specific Health Plan or a Strategic Health Plan, etc. Please note: The Public Health Service urges applicants submitting strategic health plans to address specific objectives of *Healthy People 2010*. Interested applicants may purchase a copy of *Healthy People 2010* (Summary Report in print; Stock No. 017–001–00547–9) or CD–ROM (Stock No. 107–001–00549–5) through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburg, Pennsylvania, 15250–7945, or (202) 512–1800. You may access this information via the Internet at the following Web site: *www.health.gov/healthypeople/publications/*.

C. Evaluation Study—(Maximum funding/project period: $50,000/12 months). A systematic collection, analysis, and interpretation of data for the purpose of determining the value of a program. The extent of the evaluation study could relate to the goals and objectives, policies and procedures, or programs regarding targeted groups. The evaluation study could also be used to determine the effectiveness and efficiency of a tribal program operation (*i.e.* direct services, financial management, personnel, data collection and analysis, third-party billing, etc.) as well as determine the appropriateness of new components to a tribal program operation that will assist tribal efforts to improve the health care delivery systems.

D. *Health Management Structure*—(Average funding/project period: $100,000/12 months; maximum funding/project period: $300,000/36 months). Implementation of systems to manage or organize PSFAs. Management structures include health department organizations; health boards; and financial management systems, including systems for accounting, personnel, third-party billing, medical records, management information systems, etc. This includes the design, improvements, and correction of management systems that address weaknesses identified through quality control measures, internal control reviews, and audit report findings under the Office of Management and Budget (OMB) Circular No. A–133—Revised June 27, 2003, ''Audits of States, Local Governments, and Non-Profit Organizations.'' A copy of this circular and 25 Code of Federal Regulations (CFR) Part 900, ''Indian Self-Determination and Education Assistance Act Amendments'', Subpart F—''Standards for Tribal or Tribal Organization Management Systems'' will be made available in the appendix of the TMG application kit. Please see the ''Application and Submission Information'' section for directions about how to request a copy of the TMG application kit.

III. Eligibility Information

1. Eligible Applicants

Any federally-recognized Indian tribe or tribally-sanctioned tribal organization is eligible to apply for a grant. Eligible applicants include tribal organizations that operate mature contracts that are designated by a tribe to provide technical assistance and/or training. Only one application per tribe or tribal organization is allowed.

2. Cost Sharing or Matching

The TMG Program does not require cost sharing or matching to participate in the competitive grant process. However, in accordance with Pub. L. 93–638 section 103(c), the TMG funds may be used as matching shares for any other Federal grant programs that develop tribal capabilities to contract for the administration and operation of health programs.

3. Other Requirements

The following documentation is required (if applicable):

- *Tribal Resolution*—A resolution of the Indian tribe served by the project must accompany the application submission. An Indian tribe that is proposing a project affecting another Indian tribe must include resolutions from all affected tribes to be served. Applications by tribal organizations will not require a specific tribal resolution if the current tribal resolution(s) under which they operate would encompass the proposed grant activities. Draft resolutions are acceptable in lieu of an official resolution. However, an official signed tribal resolution must be received by the Grants Management Branch prior to the beginning of the Objective Review (October 18–22, 2004). If an official signed resolution is not submitted by the date referenced, the application will be considered incomplete and will be returned without consideration.
- *Documentation for Priority I Participation*—A copy of the **Federal Register** notice or letter from the Bureau of Indian Affairs verifying establishment of Federal tribal status within the last 5 years.
- *Documentation for Priority II Participation*—A copy of the transmittal letter and Attachment A from the Office of the Inspector General, NEAR Center, Department of Health and Human Services. *See* Funding Priorities for more information. If an applicant is unable to locate a copy of their most recent transmittal letter or needs assistance with audit issues, information or technical assistance may be obtained by contacting the IHS Audit Resolution Advisory Office at (301) 443–7301, or the National External Audit Review Center help line at (816) 374–6714 ext. 108. The auditor may also have the information/documentation required.
- *Documentation of Consortium Participation*—If an Indian tribe submitting an application is a member of a consortium, the tribe must:
  - Identify the consortium.
  - Indicate if the consortium intends to submit a TMG application.
  - Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.

If a consortium is submitting an application it must:

• Identify all the consortium member tribes.
• Identify if any of the member tribes intend to submit a TMG application of their own.
• Demonstrate that the consortium's application does not duplicate or overlap any objectives of the other consortium members who may be submitting their own TMG application.
• Please refer to sections IV.5. ''Funding Restrictions'' and V.2. ''Review Section Process'' for more information regarding other application submission information and/or requirements.

IV. Application and Submission Information

1. Address To Request Application Package

Interested parties may request a copy of the TMG application kit from either of the following persons:

Ms. Deanna J. Dick, Office of Management Support, Indian Health Service, 801 Thompson Avenue, TMP 625, Rockville, Maryland 20852, (301) 443–6290;

Ms. Patricia Spotted Horse, Grants Management Branch, Indian Health Service, 801 Thompson Avenue, TMP 100, Rockville, Maryland 20852, (301) 443–5204.

The entire application kit is also available online at: *www.ihs.gov/NonMedicalPrograms/tmg/index.asp*.

2. Content and Form of Application Submission

A. All applications should:
• Be single-spaced.
• Be typewritten.
• Have consecutively numbered pages.
• Use black type not smaller than 12 characters per one inch.
• Have one-inch border margins.
• Be printed on one side only of standard size 8½″ x 11″ paper.
• Not be tabbed, glued, or placed in a plastic holder.
• Contain a narrative that does not exceed 14 typed pages that includes the below listed sections. (The 14-page narrative does not include the workplan, standard forms, Tribal resolution(s), table of contents, budget, budget justifications, multi-year narratives, multi-year budget, multi-year budget justifications, and/or other appendix items.)
• Introduction and Need for Assistance;
• Project Objective(s), Approach, and Results and Benefits;
• Project Evaluation;
• Organizational Capabilities and Qualifications.

Include in the application the following documents in the order presented. The Application Receipt Record, Checklists, General Information Page, Standard Forms, Certifications, and Disclosure of Lobbying Activities documents will be available in the appendix of application kit:
• Application Receipt Record, IHS–815–1A (Rev. 2/04).
• FY 2005 TMG Application Checklist.
• FY 2005 General Information Page.
• Tribal Resolution (final signed or draft unsigned).
• Documentation for Priority I Participation (if applicable).
• Documentation for Priority II Participation (if applicable).
• Documentation of Consortium Participation (if applicable).
• Standard Form 424, Application for Federal Assistance.
• Standard Form 424A, Budget Information—Non-Construction Programs (pages 1–2).
• Standard Form 424B, Assurances—Non-Construction Programs (front and back) The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42 CFR part 36, subpart H.
• Certifications (pages 17–19).
• PHS–5161 Checklist (pages 25–26).
• Disclosure of Lobbying Activities.
• Table of Contents with corresponding numbered pages.
• Project Narrative (not to exceed 14 typewritten pages—should address first year only if project is a multi-year request).
• Categorical Budget and Budget Justification.
• Multi-year Objectives and Workplan with Multi-year Categorical Budget and Multi-year Budget Justifications (if applicable).
• Appendix Items.

3. Submission Dates and Times

Applications must be postmarked on or before Friday, August 20, 2004 (anticipated start date of grants: January 1, 2005).

The IHS is accepting only paper applications at this time. Include one original and two complete copies of the final proposal with all required signatures and documentation. Mark the original application with a cover sheet that states, ''Original Grant Application.'' Mail or hand-deliver applications to the Division of Acquisition and Grants Management, Grants Management Branch, Indian Health Service, 801 Thompson Avenue, Rockville, Maryland 20852. Please note: all mailed applications must be postmarked on or before August 20, 2004.

Hand Delivered Proposals: Hand delivered proposals will be accepted from 8 a.m. to 5 p.m. eastern standard time, Monday through Friday. Applications will be considered to meet the deadline if they are received on or before the deadline, with hand-carried applications received by close of business 5 p.m. For mailed applications, a dated, legible receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will not be considered for funding. Receipt of applications will be acknowledged via the IHS–815–1A (Rev. 2/04) Application Receipt Record.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

Ineligible Project Activities

The TMG may not be used to support recurring operational programs or to replace existing public and private resources. **Note:** The inclusion of the following projects or activities in an application will render the application ineligible and the application will be returned to the applicant:
• Planning and negotiating activities associated with the intent of a Tribe to enter the IHS Self-Governance Project. A separate grant program is administered by the IHS for this purpose. Prospective applicants interested in this program should contact Ms. Mary Trujillo, Office of Tribal Self-Governance, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852, (301) 443–7821, and request information concerning the ''Tribal Self-Governance Program Planning Cooperative Agreement Announcement'' or the ''Negotiation Cooperative Agreement Announcement.''
• Projects related to water, sanitation, and waste management.
• Projects that include long-term care or provision of direct services.
• Projects that include tuition, fees, or stipends for certification or training of staff to provide direct services.
• Projects that include design and planning of construction for facilities, including activities related to Program Justification Documents.
• Projects that propose more than one project type. For example, the inclusion of strategic planning (planning) and third-party billing (health management

structure) in one project, or the inclusion of program evaluation (evaluation) and medical records update (health management structure) in another project.

Other Limitations—A current TMG recipient cannot be awarded a new, renewal, or competing continuation grant for any of the following reasons:

- The tribal management grantee may not have two tribal management grants funded concurrently;
- The current project is not progressing in a satisfactory manner; or
- The current project is not in compliance with program and financial reporting requirements.

Delinquent Federal Debts: No award shall be made to an applicant who has an outstanding delinquent Federal debt until either:

- The delinquent account is paid in full; or
- A negotiated repayment schedule is established and at least one payment is received.

6. Other Submission Requirements

Beginning October 1, 2003, applicants were required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Internet applications for a DUNS number can take up to 30 days to process. Interested parties may wish to obtain one by phone to expedite the process. The following information is needed when requesting a DUNS number:

- Organization name.
- Organization address.
- Organization telephone number.
- Name of CEO, Executive Director, President, etc.
- Legal structure of the organization.
- Year organization started.
- Primary business (activity) line.
- Total number of employees.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses.

1. Criteria

Introducation and Need for Assistance (20 Points)

a. Describe the tribe's/tribal organization's current health operation. Include what programs and services are currently provided (*i.e.*, federally funded, State funded, *etc.*), information regarding technologies currently used (*i.e.*, hardware, software, services, *etc.*), and identify the source(s) of technical support for those technologies (*i.e.*, tribal staff, Area Office, vendor, *etc.*). Include information regarding whether the tribe/tribal organization has a health department and/or health board and how long it has been operating.

b. Describe the population to be served by the proposed project. Include a description of the number of IHS eligible beneficiaries who currently use services.

c. Describe the geographic location of the proposed project including any geographic barriers to the health care users in the area to be served.

d. Identify all previous TMGs received, dates of funding, and summary of project accomplishments. Include how previous TMG funds facilitated the progression of health development relative to the current proposed project. (Copies of reports will not be accepted.)

e. Identify the eligible project type and priority group of the applicant.

f. Explain the reason for your proposed project by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed project. Explain how these gaps/weaknesses were discovered. If proposed project includes information technology (*i.e.*, hardware, software, *etc.*), provide further information regarding measures taken or to be taken that ensure the proposed project will not create other gaps in services or infrastructure (*i.e.*, IHS interface capability, Government Performance Reporting Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, *etc.*).

g. Describe the effect of the proposed project on current programs (*i.e.*, federally funded, State funded, *etc.*) and, if applicable, on current equipment (*i.e.*, hardware, software, services, *etc.*). Include the affect of the proposed project on planned/anticipated programs and/or equipment.

h. Address how the proposed project relates to the purpose of the TMG Program by addressing the appropriate description that follows:

- Identify if the tribe/tribal organization is a Title I contractor. Address if the self-determination contract is a master contract of several programs or if individual contracts are used for each program. Include information regarding whether or not the tribe participates in a consortium contract (*i.e.*, more than one tribe participating in a contract). Address what programs are currently provided through those contracts and how the proposed project will enhance the organization's capacity to manage the contracts currently in place.
- Identify if the tribe/tribal organization is a Title V compactor. Address when the tribe/tribal organization entered into the compact and how the proposed project will further enhance the organization's management capabilities.
- Identify if the tribe/tribal organization is not a Title I or Title V organization. Address how the proposed project will enhance the organization's management capabilities, what programs and services the organization is currently seeking to contract, and an anticipated date for contract.

Project Objective(s), Approach, and Results/Benefits (40 Points)

a. Describe the proposed project objective(s) in measurable and quantifiable terms.

b. Address how the proposed project will result in change or improvement in management capabilities by identifying the expected benefits (*i.e.*, operational improvements) of each proposed project objective. Also include information regarding expected outcomes (*i.e.*, tangible products) of each proposed project objective.

c. Address the extent to which the proposed project will build the local capacity to provide, improve, or expand services that address the need of the target population.

d. Submit a workplan in the appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing the proposed project objective(s).
- Identify who will perform the action steps.
- Identify what tangible products will be produced during and at the end of the proposed project objective(s).
- Identify who will supervise the action steps taken.
- Identify who will accept work products at the end of the proposed project.
- Include any training that will take place during the proposed project and who will be attending the training.
- Include evaluation activities planned.

e. If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume in the appendix.

f. Describe what updates (*i.e.*, revision of policies/procedures, upgrades, technical support, *etc.*) will be required for the continued success of the proposed project. Include when these updates will be necessary and where funds will come from to conduct the update and/or maintenance.

Project Evaluation (15 Points)

a. Describe how the progress of the proposed project objective(s) will be tracked (*i.e.*, status reports, meetings, *etc.*)

b. Define what data will be collected to evaluate the success of the proposed project objective(s).

c. Describe how and when the data will be collected for the proposed project objective(s).

d. Explain how the data will be used to show (*i.e.*, measure, *etc.*) the change brought about by the proposed project objective.

e. Describe any future evaluation efforts for the proposed project that will be conducted after the expiration of the grant.

Organizational Capabilities and Qualifications (15 Points)

a. Describe the organizational structure of the tribe/tribal organization beyond health care activities.

b. If the tribe/tribal organization does not have an established management system currently in place that complies with 25 CFR part 900, subpart F, ''Standards for Tribal Management Systems'', provide information regarding plans to obtain management systems. If management systems are already in place, simply note it. (A copy of the 25 CFR part 900, subpart F, will be available in the TMG application kit.)

c. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

d. Describe what equipment (*i.e.*, fax machine, phone, computer, *etc.*) and facility space (*i.e.*, office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.

e. List key personnel who will work on the project. Include title used in the workplan. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed project. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities.

f. If the project requires additional personnel (*i.e.*, IT support, *etc.*), address how the tribe/tribal organization will sustain the position(s) after the grant expires. (If there is no need for additional personnel, simply note it.)

Categorical Budget and Budget Justification (10 Points)

a. Provide a categorical budget for each of the 12-month budget periods requested.

b. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

c. Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.*, equipment specifications, *etc.*).

Multi-Year Project Requirements

Projects requiring a second or third year must include a program narrative, categorical budget, and budget justification for each additional year of funding requested.

Appendix Items

- Workplan for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant proposed scope of work (if applicable).
- Indirect Cost Agreement.
- Organizational chart (optional).

2. Review Selection Process

In addition to the above criteria/requirements, applications are considered according to the following:

1. Application Submission (Application Deadline: August 20, 2004)

Applications submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

- The applicant and proposed project type is eligible in accordance with this grant announcement.
- The application is not a duplication of a previously funded project.
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an indepth evaluation; otherwise, it may be returned.

2. Competitive Review of Eligible Applications (Objective Review: October 18–22, 2004)

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TMG funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC and scored high enough to be considered for funding, are forwarded by the Grants Management Branch to the Area Offices for cost analysis and further recommendation. The program official accepts the Area Office Contract Proposal Liaison Officers' recommendations for consideration when funding applications. The program official forwards the final approved list to the Director, Office of Management Support, for final review and approval. Applications scoring below 60 points will be disapproved and returned to the applicant. Applications which are approved but not funded will not be carried over into the next cycle for funding consideration.

3. Anticipated Announcement and Award Dates

The IHS anticipates an award start date of January 1, 2005.

VI. Award Administration Information

1. Award Notices

Notification: First week of December 2004.

The Director, Office of Management Support, or program official, will notify the contact person named on each proposal of the results in writing via

postal mail. Applicants whose applications are declared ineligible will receive written notification of the ineligibility determination and their original grant application via postal mail. The ineligible notification will include information regarding the rationale for the ineligible decision citing specific information from the original grant application. Applicants who are approved but unfunded and disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted. Applicants which are approved and funded will be notified through the official Notice of Grant Award (NGA) document. The NGA will serve as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Project Director that an application was selected is not an authorization to begin performance. Any costs incurred before receipt of the NGA are at the recipient's risk and may be reimbursed only to the extent considered allowable pre-award costs.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

- This grant announcement.
- Health and Human Services regulations governing Pub. L. 93–638 grants at 42 CFR 36.101 *et seq.*
- 45 CFR part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Including Indian Tribes,'' or 45 CFR part 74, ''Administration of Grants to Non-Profit Recipients''
- Public Health Service Grants Policy Statement.
- Grants Policy Directives.
- Appropriate Cost Principles: OMB Circular A–87, ''State and Local Governments,'' or OMB Circular A–122, ''Non profit Organizations''.
- OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''.
- Other applicable OMB circulars.

3. Reporting

- *Progress Report*—Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.
- *Financial Status Report*—Semi annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

VII. Agency Contact(s)

Interested parties may obtain TMG programmatic information from Ms. Deanna Dick through the information listed on page 6 of this application kit. Grant-related and business management information may be obtained from Ms. Patricia Spotted Horse through the information listed on page 6 of this application kit. Please note that the telephone numbers provided are not toll-free.

VIII. Other Information

The IHS will have four training sessions to assist potential applicants in preparing their FY 2005 TMG application. There will be one 5-day training session and three 2-day training sessions.

The 5-day training session scheduled in May will provide participants with the basics of grant writing and will be conducted by the Grantsmanship Center, Inc., of Los Angeles, California. This session will provide participants with basic grant writing skills, information regarding where to search for funding opportunities, and the opportunity to begin writing a grant proposal.

The 2-day training sessions will be conducted by the TMG Program Coordinator. The sessions will focus on the TMG specifically providing participants with information contained in this announcement, clarifying any issues/questions applicants may have, and critiquing project ideas. In an effort to make the 2-day training sessions productive, participants are expected to bring draft proposals to these meetings.

Priority will be given to groups eligible to apply for the TMG Program. Participation is also limited to two personnel from each tribe or tribal organization. All sessions are first come—first serve with the above limitations noted. All participants are responsible for making and paying for their own travel arrangements. Interested parties should register with the TMG staff prior to making travel arrangements to ensure space is available in selected session. The registration form may be requested from Ms. Dick at (301) 443–6290 or by accessing the TMG Web site at: *www.ihs.gov/nonmedicalprograms/tmg/index.asp*. This form may be faxed to (301) 443–2510. The training dates are listed below in chronological order:

- May 24–28, 2004—Minneapolis, MN (limit 26; registration/reservation deadline: May 13, 2004).

Holiday Inn Select Airport, 3 Appletree Square, Bloomington, MN 55425, (800) 465–4329—reference: Indian Health Service Tribal Management Grant Program.

Hotel rate: $88/night plus 13.5% tax.

Hotel has complimentary shuttle to/from airport.

Complimentary overnight parking available.

- June 23–24, 2004—Denver, CO (limit 24; registration/reservation deadline: June 14, 2004).

Comfort Inn Downtown, 401 17th Street, Denver, CO 80202, (303) 296–0400—reference: Indian Health Service Tribal Management Grant Program.

Hotel rate: $102/single or double plus 13.45% tax.

Approximate SuperShuttle rate to/from hotel and airport: $32 roundtrip.

Overnight parking available: $16/night.

- July 7–8, 2004—Washington, DC area (limit 24; registration/reservation deadline: June 11, 2004).

Lincoln Suites Downtown, 1823 L Street, NW., Washington, DC 20036, (202) 223–4320—reference: Tribal Management Grant Training Workshop.

Hotel rate: $150/night plus 14.5% tax.

Approximate taxi/cab rate to/from hotel and airport: $20 one-way.

Overnight parking available: $20/night.

- July 21–22, 2004—Portland, OR (limit 24; registration/reservation deadline: June 21, 2004).

Portland Marriott City Center, 520 SW. Broadway, Portland, OR 97205, (800) 228–9290—reference: IHS TMG.

Hotel rate: $91/single or double plus 12.5% tax.

Approximate taxi/cab rate to/from hotel and airport: $30 one-way. (Hotel is located approximately 1½ blocks from the Pioneer Square North stop on the Max Red Line Light Rail which runs to/from airport; cost—$1.60 one way. Information about the Light Rail system can be accessed by using: *www.trimet.org.*)

Overnight parking: $22/night.

The Public Health Service (PHS) strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain

facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: April 20, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–9473 Filed 4–26–04; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–08]

Notice of Proposed Information Collection for Public Comment; Consolidated Public Housing Certificate of Completion

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry F. McCown, Acting Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry F. McCown, (202) 708–0614, extension 7651. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Consolidated Public Housing Certificate of Completion.

OMB Control Number: 2577–0021.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) are required to certify to HUD that contract requirements and standards have been satisfied in a specific project development and that HUD may authorize payment of funds due the contractor/developer.

Agency form numbers, if applicable: None.

Members of affected public: State, Local or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 147 respondents reporting, one hour average per response, 147 hours for a total reporting burden.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 21, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–9466 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–09]

Notice of Proposed Information Collection for Public Comment; Public Housing Development and Mixed-Finance Development of Units; Proposal, Financial Feasibility, Site Information Turnkey Method, Evidentiary Materials

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

ACTION: Notice.

SUMMARY: HUD will submit the proposal for collection of information described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department will request this previously approved information collection be extended, and is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry F. McCown, Acting Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry F. McCown, (202) 708–0614, extension 7651. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection

techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Development and Mixed-Finance Development of Units; Proposal, Financial Feasibility, Site Information Turnkey Method, Evidentiary Materials.

OMB Control Number: 2577–0033.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) must provide information to HUD before a proposal can be approved for development or mixed-finance development. Information on HUD-prescribed forms provides HUD with sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made.

Agency form numbers, if applicable: HUD–51971–I, HUD–51971–II, HUD–54282, HUD–*52483–A, HUD–52485, HUD–52651–A.*

Members of affected public: Business or other for-profit, State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	334		1		22		7,595

Total Estimated Burden Hours: 7,595.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 27, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–9467 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4910–N–10]

Notice of Proposed Information Collection for Public Comment; Requirements for Designating Housing Projects

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry F. McCown, Reports Liaison Officer, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry F. McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Requirements for Designating Housing Projects.

OMB Control Number: 2577–0192.

Description of the need for the information and proposed use: The information collection burden associated with designated housing is required by statute. Section 10 of the Housing Opportunity and Extension Act of 1996 modified Section 7 of the U.S. Housing Act of 1937 to require Public Housing Agencies (PHAs) to submit to HUD a plan for designation before they designate projects for elderly families, only disabled families only, or elderly and disabled families. In this plan, PHAs must document why the designation is needed and what additional housing resources will be available to the non-designated group.

Agency form number: None.

Members of affected public: State or Local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 176 respondents; one response per respondent annually; 21 hours average per response, 3,358 total reporting burden hours per year.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 21, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–9468 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–04]

Notice of Proposed Information Collection for Public Comment on Updating the Low Income Housing Tax Credit Database

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kurt Usowski, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–0426 (this is not a toll-free number). Copies of the proposed data collection instruments and other available documents may be obtained from Mr. Usowski.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Updating the Low Income Housing Tax Credit Database.

Description of the need for the information and proposed use: Section 42 of the I.R.C. provides for Low Income Housing Tax Credits (LIHTC) that encourages the production of qualified low-income housing units. Due to the decentralized nature of the LIHTC program, there are few data available on the units that are currently being developed with this federal tax subsidy. The Department of Housing and Urban Development, while not responsible for administering tax credits, has special responsibilities in understanding and evaluating credit usage, both because the LIHTC helps provide for the housing needs of low-income persons and because credits work in conjunction with HUD subsidies in some units.

Absent this data collection, HUD will not have at its disposal the most current, comprehensive LIHTC data, rendering HUD unable to determine the types of areas in which the units are located, the concentration of such units geographically and with respect to other subsidized housing types, or whether incentives to develop LIHTC units in a set of HUD designed Difficult Development Areas has been effective. In addition, without these data, both HUD and private researchers will be unable to conduct sample-based studies on the LIHTC due to the difficulty of constructing a valid sample without a complete data set on the universe of LIHTC projects.

Members of affected public: Information will be solicited from the 58 agencies (predominantly state-level) that allocate credits under section 42 of the I.R.C.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 58.

Number of responses per respondent: 01.

Total number of responses per annum: 58.

Hours per response: 24.

Total hours: 1,392.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 19, 2004.

Darlene F. Williams,

General Deputy Assistant Secretary, for Policy Development and Research.

[FR Doc. 04–9534 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–05]

Notice of Proposed Information Collection for Public Comment on the Mortgage Seekers Survey

AGENCY: Office of the Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: William Reeder, Director, Housing Finance Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–5000; (202) 708–0421, extension 5876. (This is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Reeder.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgage Seekers Survey.

Description of the need for the information and proposed use: This request is for the clearance of a survey instrument designed to measure the experience of Americans who have recently been through the process of seeking a mortgage. Especially important in this study is to evaluate the

potential differences in experiences of minorities when seeking a mortgage. The purpose of the survey is to: (1) Identify those who have been through the mortgage seeking process in the past year, or purchased a first home within the past 3 years; (2) Ascertain the level of preparation, support, and knowledge before beginning the search for a mortgage, as well as identifying specific behaviors and experiences during the mortgage seeking process; and (3) Conduct a large enough survey, using disproportionate sampling, to assess the experiences of specific racial/ethnic groups versus the national average. Specific groups of interest are African Americans, and Hispanics/Latinos.

OMB Approval Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The primary study will involve screening 9,473 households and 1,800 individuals will be surveyed. Average time to complete the screener is 2 minutes, and the time to complete the survey is 15 minutes. Respondents will only be contacted once. Total burden hours are 770.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 19, 2004.

Darlene F. Williams,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 04–9535 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4904–N–07]

Notice of Proposed Information Collection: Comment Request Disaster Recovery Grant Reporting System

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jan Opper, Senior Program Officer, Office of Block Grant Assistance, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number: (202) 708–3587, ext. 4538 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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 agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Recovery Grant Reporting System.

OMB Control Number, if applicable: 2506–0165.

Description of the need for the information and proposed use: HUD needs to collect information with Disaster Recovery Grant Reporting System to comply with quarterly Congressional reporting requirements with respect to the use of Community Development Block Grant (CDBG) funds awarded under several appropriations for disaster recovery assistance and for other related program management purposes. Use of this system for reporting purposes is mandatory. Once submitted to HUD, information is public.

Agency form numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the Information Collection: 10960 hours.

Estimated number of respondents: 82 respondents.

Frequency of response: quarterly.

Hours for response annually per respondent: 128 for 80 respondents; 360 for 2 respondents.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 20, 2004.

Roy Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 04–9537 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–05]

Notice of Availability of a Final Generic Environmental Impact Statement for the World Trade Center Memorial and Redevelopment Plan in the Borough of Manhattan, City of New York, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives notice to the public, agencies, and Indian tribes that a final Generic Environmental Impact Statement (Final GEIS) for the World Trade Center Memorial and Redevelopment Plan (Proposed Action) has been completed and is available for review and comment. This notice is given on behalf of the Lower Manhattan Development Corporation (LMDC). LMDC is a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York). As the recipient of HUD Community Development Block Grant funds appropriated for the World Trade Center disaster recovery and rebuilding efforts, LMDC acts, pursuant to 42 U.S.C. 5304(g), as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4. LMDC also acts under its authority as lead agency in accordance with the New

York State Environmental Quality Review Act. The Final GEIS has been prepared in cooperation with the Port Authority of New York and New Jersey. A NEPA Record of Decision (ROD) will be issued after the availability period. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

DATES: *Comment Due Date:* All interested agencies, groups and persons may submit comments on the Final GEIS. Comments must be received by 5 p.m. Eastern Daylight Time (EDT) on May 24, 2004. Comments received after 5 p.m. EDT on May 24, 2004, will not be considered. Written comments on the Final GEIS will be accepted at the following address: Lower Manhattan Development Corporation, Attention: Comments WTC Memorial and Redevelopment Plan/FGEIS, One Liberty Plaza, 20th Floor, New York, NY 10006.

Comments on the Final GEIS may also be submitted until 5 p.m. EDT on May 24, 2004, by e-mailing comments to *wtcenvironmental@renewnyc.com*.

FOR FURTHER INFORMATION CONTACT: Further information and a copy of the Final GEIS may be obtained by contacting: William H. Kelley, Planning Project Manager, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006; Telephone: (212) 962–2300; Fax: (212) 962–2431; *e-mail: wtcenvironmental@renewnyc.com*. A copy of the Final GEIS is also available on LMDC's Web site: *http://www.RenewNYC.com* in the ''Planning, Design & Development'' section.

A copy of the Final GEIS is also available for public review at the following locations:

Chatham Square Library, 33 East Broadway, New York, NY 10007

New Amsterdam Library, 9 Murray Street, New York, NY 10002.

Humanities and Social Sciences, Library, 476 5th Avenue, New York, New York 10028.

Hamilton Fish Library, 415 East Houston Street, New York, NY 10002.

Hudson Park Library, 66 Leroy Street, New York, NY 10007.

Manhattan Community Board#1, 49–51 Chamber Street, #715, New York, NY 10007.

Manhattan Community Board #2, 3 Washington Square Park, New York, NY 10012.

Manhattan Community Board #3, 59 East 4th Street, New York, NY 10003.

SUPPLEMENTARY INFORMATION: The Proposed Action would provide for the construction on the Project Site of the World Trade Center Site Memorial (Memorial), an interpretive museum (Memorial Center), cultural facilities, and Memorial-related improvements, up to 10 million square feet of above-grade Class A office space, plus associated storage, mechanical, loading, below-grade parking, and other non-office space, up to 1 million square feet of retail space, a hotel with up to 800 rooms and up to 150,000 square feet of conference space, open space areas, and certain infrastructure improvements. The Proposed Action would be assisted in part by HUD Community Development Block Grant funds appropriated by Congress for the World Trade Center disaster recovery and rebuilding efforts.

The Project Site consists of the World Trade Center Site (WTC Site) and the Southern Site in Lower Manhattan, New York, New York. The WTC Site is an approximately 16-acre parcel bounded by Liberty Street, Church Street, Vesey Street, and Route 9A. The Southern Site comprises two adjacent blocks south of the WTC Site—one bounded by Liberty, Washington, Albany, and Greenwich Streets, and the other bounded by Liberty, Cedar, and Washington Streets and Route 9A—and portions of two streets: Liberty Street between those blocks and the WTC Site, and Washington Street between Cedar and Liberty Streets.

The proposed design would extend Fulton and Greenwich Streets through the WTC Site, dividing the site into quadrants. The Memorial, Memorial Center, and cultural buildings would occupy the southwest quadrant where the Twin Towers once stood. At the northwest corner of the WTC Site would be the tallest structure in the complex, Freedom Tower. The four other proposed towers would descend in height clockwise to the fifth tower on the Southern Site.

This fifth tower would have a ground-floor retail area and would be located on the south end of the Southern Site. The Southern Site would be reconfigured to open Cedar Street between Greenwich and Washington Streets and close Washington Street between Liberty and Cedar Streets. This would allow the creation of a single large open space on the new block south of Liberty Street as well as the tower site between Cedar and Albany Streets. St. Nicholas Greek Orthodox Church would rebuild its facility in the open space not far from its previous location on September 10, 2001.

The Proposed Action also provides for infrastructure and utilities to support the operations of the Project Site as a whole, including below-grade freight servicing and loading, a below-grade bus parking garage serving the Memorial, below-grade rentable storage, below-grade chiller and fan plants, a parking garage for building tenants and safety and security related facilities. The bus parking may be underground on the Southern Site or possibly on the WTC Site itself.

The Final GEIS analyzes the Proposed Action's potential impacts to land use and public policy, urban design and visual resources, historic resources, open space, shadows, community facilities, socioeconomic conditions, neighborhood character, air quality, noise, hazardous materials, infrastructure/safety/security, traffic and parking, transit and pedestrians, coastal zone, floodplain, natural resources, electromagnetic fields, environmental justice, and construction. The Final GEIS also considers mitigation measures, alternatives, unavoidable adverse impacts, growth-inducing aspects of the Proposed Action, irreversible and irretrievable commitments of resources, indirect and cumulative effects and other areas of potential environmental impact.

Alternatives looked at in the Final GEIS include a no-action alternative, and a reasonable range of other alternatives, including a Memorial-only alternative, a restoration alternative, rebuilding alternatives, a WTC Site-only alternative, an enhanced green construction alternative, a co-generation alternative, a reduced impact alternative, an at-grade loading alternative, and a cooling towers alternative.

Issuance of the Final GEIS will trigger a review period, after which a ROD will be issued. The issuance of the ROD will conclude a planning and environmental review process that started with the notice of intent to prepare a GEIS published in the **Federal Register** on July 7, 2003 (68 FR 40289). On July 23, 2003, LMDC held two public scoping meetings in order to receive public comment on the Draft Scope, and the public comment period on the Draft Scope remained open until August 4, 2003. The notice of availability of the Draft GEIS was published in the **Federal Register** on January 23, 2004 (69 FR 3382). On February 18, 2004, LMDC held two public hearings in order to receive public comment on the Draft GEIS, and the public comment period on the Draft GEIS remained open until March 15, 2004.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: April 20, 2004.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 04–9469 Filed 4–26–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Middletown Rancheria Tribe Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Middletown Rancheria Tribal Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor on the Middletown Rancheria. The land is located on trust land and this ordinance allows for the possession and sale of alcoholic beverages on the Middletown Rancheria and will increase the ability of the tribal government to control Rancheria liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This code is effective on April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Southwest Regional Office, Branch of Tribal Government, P.O. Box 26567, Albuquerque, New Mexico 87125–6567; Telephone (505) 346–7592 or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20245; telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Middletown Rancheria Tribe adopted Tribal Ordinance No. 03–03–01 on March 1, 2003. The purpose of this ordinance is to govern the sale, possession and distribution of alcohol on the Middletown Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that Liquor Ordinance No. 03–03–01 was duly adopted by the Middetown Rancheria Tribal Council on March 1, 2003.

Dated: April 15, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

The Middletown Rancheria Tribal Liquor Control Ordinance #03–03–01 reads as follows:

Middletown Rancheria Band of Pomo Indians Liquor Ordinance #03–03–01

Chapter I—Introduction

Section 101. *Title.* This ordinance shall be known as the ''MIDDLETOWN RANCHERIA BAND OF POMO INDIANS LIQUOR ORDINANCE #03–03–01.''

Section 102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and the Interim Governing Procedures (Approved 1994) of the Middletown Rancheria.

Section 103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Middletown Rancheria. The enactment of a tribal ordinance governing liquor possession and sale on the Rancheria will increase the ability of the tribal government to control Rancheria liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 104. Community opinion within the Tribe supports the enactment of this ordinance.

Section 105. This ordinance shall apply to the Middletown Rancheria, including all lands within the exterior boundaries of the Rancheria.

Section 106. This ordinance conforms to, and is not inconsistent with, tribal, State and Federal law.

Chapter II—Definitions

Section 201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 202. *Alcohol.* Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

Section 203. *Alcoholic Beverage.* Is synonymous with the term ''Liquor'' as defined in Section 207 of this Chapter.

Section 204. *Bar.* Means any establishment with special space and accommodations for sale by the glass, can or bottle and for consumption on the premises of liquor, as herein defined.

Section 205. *Beer.* Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as ''strong beer.''

Section 206. *General Membership.* Means as prescribed and defined by the Interim Governing Procedures of the Middletown Rancheria.

Section 207. *Liquor.* Includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquor or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 208. *Liquor Store.* Means any store at which liquor is sold and, for the purposes of this ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

Section 209. *Malt Liquor.* Means beer, strong beer, ale, stout, and porter.

Section 210. *Package.* Means any container or receptacle used for holding liquor.

Section 211. *Rancheria.* Means land held in trust by the United States Government for the benefit of the Middletown Rancheria Tribe (see also Section 216, Tribal Land).

Section 212. *Sale and Sell.* Include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

Section 213. *Spirits.* Means any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 214. *Tribal Council.* Means the Tribal Council of the Middletown Rancheria Band of Pomo Indians.

Section 215. *Tribal Land.* Means any land within the exterior boundaries of the Rancheria, which is held in trust by the United States for the Tribe as a whole, including such land leased to other parties.

Section 216. *Tribe.* Means the Middletown Rancheria Band of Pomo Indians.

Section 217. *Wine.* Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Section 218. *Trust Account.* Means the account designated by the General Council for deposit of proceeds from the tax from the sale of alcoholic beverages.

Section 219. *Trust Agent.* Means the Tribal Chairperson or other designee of the General Council.

Chapter III—Powers of Enforcement

Section 301. *Powers*. The General Council, in furtherance of this ordinance, shall have the following powers and duties:

(a) To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Rancheria;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the General Council to perform its functions;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Rancheria;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violation of this ordinance;

(g) To make such reports as may be required by the General Membership;

(h) To collect taxes and fees levied or set by the General Council and to keep accurate records, books, and accounts; and

(i) To exercise such powers as are delegated by the General Council.

Section 302. *Limitation on Powers*. In the exercise of its powers and duties under this ordinance, the General Council and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any license.

Section 303. *Inspection Rights*. The premises on which liquor is sold or distributed shall be open for inspection by the General Council or its designee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this ordinance are being complied with.

Chapter IV—Sales of Liquor

Section 401. *Licenses Required*. No sales of alcoholic beverages shall be made within the exterior boundaries of the Rancheria, except at a tribally licensed or tribally owned business operated on tribal land within the exterior boundaries of the Rancheria.

Section 402. *Sales Only on Tribal Land*. All liquor sales within the exterior boundaries of the Rancheria shall be on tribal land, including leases thereon.

Section 403. *Sales for Cash*. All liquor sales within the Rancheria boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards such as Visa, American Express, etc.

Section 404. *Sale for Personal Consumption*. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Rancheria is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Rancheria and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

Chapter V—Licensing

Section 501. *Application for Tribal Liquor License Requirements.* No tribal license shall be issued under this ordinance except upon a sworn application filed with the General Council containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of California.

(b) Satisfactory proof that the applicant is of good character and reputation among the people of the Rancheria and that the applicant is financially responsible.

(c) The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessees of such premises, for at least the term of the license.

(d) Agreement by the applicant to accept and abide by all conditions of the tribal license.

(e) Payment of $250 fee as prescribed by the General Council.

(f) Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

(g) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the General Council and has been published at least twice in such local newspaper serving the community that may be affected by the license the General Council may authorize. The notice shall state the date, time and place when the application shall be considered by the General Council pursuant to Section 502 of this ordinance.

Section 502. *Hearing on Application for Tribal Liquor Licenses.* All applications for a tribal liquor license shall be considered by the General Council in open session at which the applicant, his attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the General Council shall determine whether to grant or deny the application based on:

(1) Whether the requirements of Section 501 have been met; and

(2) Whether the General Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event that the applicant is a member of the General Council, or a member of the immediate family of a General Council member, such members shall not vote on the application or participate in the hearings as a General Council member.

Section 503. *Temporary Permits*. The General Council or its designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed 3 days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 504 of this ordinance shall be observed by the permitted. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of $25 will be assessed on temporary permits.

Section 504. *Conditions of the Tribal License*. Any tribal license issued under this title shall be subject to such reasonable conditions, as the General Council shall fix, including, but not limited to the following:

(a) The license shall be for a term not to exceed 1 year.

(b) The license shall at all times maintain an orderly, clean and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be subject to patrol by the tribal enforcement department, and such other law enforcement officials as may be authorized under Tribal law.

(d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(e) Subject to the provisions of subsection ''f'' of this section, no intoxicating beverages shall be sold, served, disposed of, delivered or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the General Council, provided that the licensed premise shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.

(f) No liquor shall be sold within 200 feet of a polling place on Tribal election days or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the General Council.

(g) All acts and transactions under authority of the Tribal liquor license shall be in conformity with the laws of the State of California, and shall be in accordance with this ordinance and any Tribal license issued pursuant to this ordinance.

(h) No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

Section 505. *License Not a Property Right*. Notwithstanding any other provision of this ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Section 506. *Assignment or Transfer*. No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the General Council expressed by formal resolution.

Chapter VI—Rules, Regulations, and Enforcement

Section 601. *Sales or Possession With Intent to Sell Without a Permit*. Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this ordinance, or who shall operate or shall have liquor in his possession with intent to sell or distribute without a permit, shall be guilty of a violation of this ordinance.

Section 602. *Purchases From Other Than Licensed Facilities*. Any person within the boundaries of the Rancheria who buys liquor

from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.

Section 603. *Sales to Persons Under the Influence of Liquor.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this ordinance.

Section 604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent servant or employee or such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 605. *Consumption or Possession of Liquor by Person Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of separate violations of this ordinance for each and every drink so consumed.

Section 606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

Section 607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

Section 608. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification, which falsely purports to show the individual to be over the age 21 years, shall be guilty of violating the ordinance.

Section 609. *Violations of This Ordinance.* Any person guilty of a violation of this ordinance shall be liable to pay the Tribe a penalty not to exceed $500 per violation as civil crimes to defray the Tribe's cost of enforcement of this ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the General Council after 10 days notice to the licensee. The decision of the General Council shall be final.

Section 610. *Acceptable Identification.* Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following issued cards of identification which shows his correct age and bears his signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

(2) United States Active Military Duty; or

(3) Passport.

Section 611. *Possession of Liquor Contrary to This Ordinance.* Alcoholic beverages which are possessed contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the General Council to enforce this section shall have the authority to, and shall seize, all contraband.

Section 612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of the ordinance by the Tribal Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Chapter VII—Taxes

Section 701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Rancheria in the amount of 1 percent of the amount actually collected, including payments by major credit cards. The tax imposed by this section shall apply to all retail sales of liquor on the Rancheria and shall preempt any tax imposed on such liquor sales by the State of California.

Section 702. *Payment of Taxes to Tribe.* All taxes from the sale of alcoholic beverages on the Rancheria shall be paid over to the trust agent of the Tribe.

Section 703. *Taxes Due.* All taxes for the sale of alcoholic beverages on the Rancheria are due within 30 days at the end of the calendar quarter.

Section 704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Rancheria. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the General Council, such a review or audit is necessary to verify the accuracy of reports.

Chapter VIII—Profits

Section 801. *Disposition of Proceeds.* The gross proceeds collected by the General Council from all licensing provided from the taxation of the sale of alcoholic beverages on the Rancheria shall be distributed as follows:

(a) For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

(b) The remainder shall be turned over to the Trust Account of the Tribe.

Chapter IX—Severability and Miscellaneous

Section 901. *Severability.* If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other person or circumstances.

Section 902. *Prior Enactments.* All prior enactments of the General Council, which are inconsistent with the provisions of this ordinance, are hereby rescinded.

Section 903. *Conformance with California Laws.* All acts and transactions under this ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

Section 904. *Effective Date.* This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter X—Amendment

Section 1001. This ordinance may only be amended by a majority vote of the General Council.

Chapter XI—Sovereign Immunity

Section 1101. Nothing contained in this ordinance is intended to, nor does it in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Certification

We the undersigned, as duly elected officers of the Middletown Rancheria Band of California Pomo Indians, do hereby certify that Liquor Ordinance #03–03–01 was duly enacted by the General Council of the Middletown Rancheria, at a duly called, noticed and convened General Council Meeting on Saturday, March 1, 2003, where the General Council Membership was present by a vote of 12 For, and 1 Against, with 0 Abstaining and that this Ordinance shall become effective on the date of approval by the Secretary of the Interior or his authorized representative.

March 1, 2003.

Jose Simon, II,
Tribal Chairman.

March 1, 2003.

Attested by:
Pamela Reyes-Gutierrez,
Tribal Secretary.

[FR Doc. 04–9497 Filed 4–26–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK940–1310EI–241A]

National Petroleum Reserve—Alaska Oil and Gas Lease Sale 2004

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of National Petroleum Reserve—Alaska Oil and Gas Lease Sale 2004.

SUMMARY: National Petroleum Reserve—Alaska (NPR–A); Notice of Sale and Notice of Availability of the Detailed Statement of Sale for Oil and Gas Lease Sale 2004 in the NPR–A.

The Bureau of Land Management, Alaska State Office will be holding an oil and gas lease sale bid opening for the Northwest Study Area and a small,

previously unoffered portion of the Northeast Study Area of the NPR–A.

DATES: The oil and gas lease sale bid opening will be held at 8 a.m. on Wednesday, June 2, 2004, at the Wilda Marston Theatre in the Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Colleen McCarthy at (907) 271–3128.

SUPPLEMENTARY INFORMATION: All bids must be submitted by sealed bid in accordance with the provisions identified in the Detailed Statement of Sale and received at the Bureau of Land Management, Alaska State Office, 222 W. 7th, #13, Anchorage, Alaska 99513–7599 no later than 3:45 p.m., Friday, May 28, 2004.

The Detailed Statement of Sale for Sale 2004 may be obtained by written request to the Public Information Center, Bureau of Land Management, Alaska State Office, 222 W. 7th, #13, Anchorage, Alaska 99513–7599 or by telephone at (907) 271–5960. It will include, among other things, a description of the areas to be offered for lease, the lease terms, conditions and special stipulations and required operating procedures, and how and where to submit bids. It will be available to the public immediately after publication of this notice.

Peter Ditton,

Acting State Director, Alaska State Office, Bureau of Land Management.

[FR Doc. 04–9501 Filed 4–26–04; 8:45 am]

BILLING CODE 4310–JA–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010–AB57

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated with an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices for calendar year 2002.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values for the 12 months of 2002. The due date to pay is June 15, 2004.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; FAX (303) 231–3755; or David Guzy, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3432; FAX (303) 231–3755; mailing address, Minerals Management Service, Minerals Revenue Management, ONCAM, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (2003). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 (2003) will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is June 15, 2004.

GAS MAJOR PORTION PRICES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-Designated Areas	January 2002 (MMBtu)	February 2002 (MMBtu)	March 2002 (MMBtu)
Blackfeet Reservation	3.59	2.81	3.14
Fort Belknap	4.38	4.30	4.33
Fort Berthold	1.32	1.18	2.01
Fort Peck Reservation	2.14	1.62	2.01
Navajo Allotted Leases in the Navajo Reservation	2.39	1.69	2.05
Rocky Boys Reservation	1.84	1.28	1.64
Turtle Mountain Reservation	1.47	1.47	1.47
Ute Allotted Leases in the Uintah and Ouray Reservation	2.08	1.49	1.73
Ute Tribal Leases in the Uintah and Ouray Reservation	2.04	1.63	1.87

MMS-Designated Areas	April 2002 (MMBtu)	May 2002 (MMBtu)	June 2002 (MMBtu)
Blackfeet Reservation	3.62	3.84	3.56
Fort Belknap	4.50	4.53	4.44
Fort Berthold	2.61	2.69	2.36
Fort Peck Reservation	2.90	2.62	2.33
Navajo Allotted Leases in the Navajo Reservation	2.90	2.43	2.02
Rocky Boys Reservation	2.44	2.31	2.37
Turtle Mountain Reservation	1.37	1.37	2.03
Ute Allotted Leases in the Uintah and Ouray Reservation	2.62	2.03	1.83
Ute Tribal Leases in the Uintah and Ouray Reservation	2.67	2.09	1.83

MMS-Designated Areas	July 2002 (MMBtu)	August 2002 (MMBtu)	September 2002 (MMBtu)
Blackfeet Reservation	2.81	2.16	2.99
Fort Belknap	4.38	4.32	4.42
Fort Berthold	1.87	1.92	2.90
Fort Peck Reservation	2.17	1.74	2.04
Navajo Allotted Leases in the Navajo Reservation	2.49	2.45	2.27
Rocky Boys Reservation	2.20	1.90	2.22
Turtle Mountain Reservation	2.02	1.37	1.37
Ute Allotted Leases in the Uintah and Ouray Reservation	1.81	1.76	1.68
Ute Tribal Leases in the Uintah and Ouray Reservation	1.94	1.90	1.87

MMS-Designated Areas	October 2002 (MMBtu)	November 2002 (MMBtu)	December 2002 (MMBtu)
Blackfeet Reservation	3.86	4.90	4.74
Fort Belknap	4.52	4.74	4.75
Fort Berthold	3.18	3.33	3.70
Fort Peck Reservation	2.92	2.92	3.55
Navajo Allotted Leases in the Navajo Reservation	2.32	3.27	3.56
Rocky Boys Reservation	2.62	3.00	3.21
Turtle Mountain Reservation	1.37	1.39	1.39
Ute Allotted Leases in the Uintah and Ouray Reservation	1.84	2.85	3.14
Ute Tribal Leases in the Uintah and Ouray Reservation	2.00	2.78	3.29

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999.

Dated: March 29, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–9502 Filed 4–26–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 005–2004]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a system of records last published on March 10, 1992, in **Federal Register** Volume 57, page 8475, and identified as the ''General Files System of the Office of the Associate Attorney General, JUSTICE/ASG–001.'' Specifically, the Office of the Associate Attorney General is modifying the system by updating the location and system manager addresses; correcting and editing the text for the CFR citation in the ''Categories of Records'' section; and adding a new ''Purpose(s)'' section. Minor revisions have been made to several routine uses. New routine uses have been added for disclosure to complainants and/or victims (routine use I); to contractors (routine use J); to former employees under certain circumstances (routine use K); and to recipients as are mandated by federal statute or treaties (routine use L). Updates and revisions are made to the sections on storage, retrieval, and safeguarding procedures; and to the retention and disposal schedule. Updates and edits are made to the notification procedure; record access procedures; and the contesting records procedures. In addition, two record source categories are added.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by May 27, 2004. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to Congress and OMB.

Dated: April 6, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE

SYSTEM NAME:

General Files System of the Office of the Associate Attorney General, JUSTICE/ASG–001.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATION:

Office of the Associate Attorney General, United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses individuals who relate to official federal investigations, policy decisions, and administrative matters of such significance that the Associate Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, upper-echelon government officials, and individuals of national prominence or notoriety.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda or reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the Associate Attorney General's responsibilities (28 CFR 0.19) and are limited to those which are of such significance that the Associate Attorney General has investigative, policy, law enforcement, or administrative interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

PURPOSE(S):

This system is maintained for the purpose of assisting the Associate Attorney General in carrying out the responsibilities of the Office such as, but not limited to, advising the Attorney General and Deputy Attorney General in formulating Departmental policies and programs, providing overall supervision to organizational units as assigned, and other duties as assigned by the Attorney General (28 CFR 0.19).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information may be disclosed from this system as follows:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

C. Law enforcement records may be disclosed to any civil or criminal law enforcement authorities, whether federal, state, local, foreign, or tribal, which require information relevant to a civil or criminal investigation.

D. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

E. To the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

G. To federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

H. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

I. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. The Department of Justice may disclose relevant and necessary information to a former employee of the Department for the purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

L. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in electronic form and on paper. Records that contain national security information and are classified are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

RETRIEVABILITY:

Information can be retrieved by correspondence control number; name of individual; subject matter of topic; or in some cases, by other identifying search term employed.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. Classified information is appropriately stored in safes and in accordance with other applicable requirements. In general, records and technical equipment are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with guidelines approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Associate Attorney General, Office of the Associate Attorney General, United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager named above.

RECORD ACCESS PROCEDURES:

Requests for access should be directed in writing or in person to the System Manager named above. When requests are in writing, the envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address,

and date and place of birth. The request must be signed, dated and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled ''EXEMPTIONS CLAIMED FOR THE SYSTEM.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received. Although no specific form is required, you may obtain forms for this purpose from the FOIA/PA Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, or on the Department of Justice Web site at *http://www.usdoj.gov/04foia/att_d.htm*.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include individuals, state, local, tribal, and foreign government agencies, as appropriate, the executive and legislative branches of the Federal Government, the Judiciary, and interested third parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), and (5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and at 28 CFR 16.72. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5). A determination as to exemption shall be made at the time a request for access or amendment is received.

[FR Doc. 04–9512 Filed 4–26–04; 8:45 am]

BILLING CODE 4410–22–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–057)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Tuesday, May 18, 2004, 9 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—Office of Small and Disadvantaged Business Utilization Update of Activities
—NAC Meeting Report
—Overview of Agency-wide initiatives
—Update of Small Business Program
—Public Comment
—Panel Discussion and Review
—Committee Panel Reports
—Status of Open Committee Recommendations
—New Business

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mr. Lamont Hames via email at *lhames@nasa.gov* or by telephone at 202–358–2088.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–9539 Filed 4–26–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of this meeting is required under the Sunshine in Government Act.

TIME/DATE: 8 a.m. to 12:30 p.m. on Thursday May 6, 2004.

Agenda: Second Meeting of the National Museum and Library Services Board.

8 a.m.–9 a.m. Executive Session to Consider Award Nominations (Closed to the Public).

9:30 a.m.–12 p.m. Second Meeting of the National Museum and Library Services Board (Open to the Public).

I. *Welcome*
Tom Jaques, Louisiana State Librarian
Chuck Patch, Director of Systems, Historic New Orleans
II. Approval of Minutes
III. Staff Reports
IV. Board Reports
V. *Issues Discussion:* Building Institutional Capacity.

The discussion will focus on ways in which IMLS grants in Louisiana have supported important activities, including conservation and digitization, which facilitate the presentation and interpretation of artifacts, documents, and collections. Each speaker will use the example of a specific project to discuss broader issues of collections stewardship, the role of new technologies in creating a nation of learners, and the value of partnership and collaboration.

Tamra Carboni, Director of Curatorial

Services, Louisiana State Museum
Brenda Square, Head of Archives & Library, Amistad Research Center
Faye Phillips, Associate Dean of Libraries for Special Collections, Louisiana State University
VI. Other business
VII. Adjourn

ADDRESSES: Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, LA, (504) 595–6211.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The meeting from 8 a.m. to 9 a.m. on Thursday, May 6, 2004 will be closed pursuant to subsections (c)(4) and (c)(6) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The meeting from 9:30 a.m. until 12 p.m. is open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Dated: April 22, 2004.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and the Humanities, Institute of Museum and Library Services.

[FR Doc. 04–9573 Filed 4–22–04; 4:53 pm]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: April 30, 2004: 1:30 p.m.–3:00 p.m.

PLACE: Room 130, The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *www.nsf.gov/nsb.*

CONTACT FOR INFORMATION: Michael P. Crosby, Executive Officer, NSB (703) 292–7000.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Friday, April 30, 2004

Planning Discussion to Establish a Process for Reassessment of Current Prioritization of Board-Approved Large Facility Projects.

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 04–9654 Filed 4–23–04; 3:04 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* 10 CFR part 25—Access Authorization for Licensee Personnel.
3. *The form number if applicable:* N/A.
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.
6. *An estimate of the number of annual responses:* 1,022.
7. *The estimated number of annual respondents:* 50.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 267 hours (242 hours for reporting and 25 hours for recordkeeping) or approximately .26 hours per response.
9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.
10. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 27, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 20th day of April, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–9490 Filed 4–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company, H. B. Robinson Steam Electric Plant, Unit No. 2; Notice of Issuance of Renewed Facility Operating License No. DPR–23 for An Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License No. DPR–23 to Carolina Power & Light Company (the licensee), the operator of H. B. Robinson Steam Electric Plant, Unit No. 2. Renewed Facility Operating License No. DPR–23 authorizes operation of H. B. Robinson Steam Electric Plant, Unit No. 2, by the licensee at reactor core power levels not in excess of 2339 megawatts thermal in accordance with the

provisions of the H. B. Robinson Steam Electric Plant, Unit No. 2, renewed license and its Technical Specifications.

The H.B. Robinson Steam Electric Plant, Unit No. 2, nuclear facility consists of a closed-cycle, pressurized, light-water-moderated and -cooled reactor, with associated steam generators and electric generating equipment. The facility is located on the licensee's H. B. Robinson site in Darlington County, South Carolina.

The application for the renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter 1, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on July 18, 2002 (67 FR 47410).

For further details with respect to this action, see (1) the Carolina's Power & Light Company's license renewal application for H. B. Robinson, Unit No. 2 dated June 14, 2002; (2) the Commission's safety evaluation report dated March 2004 (NUREG–1785); (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement for H. B. Robinson, Unit No. 2 (NUREG–1437, Supplement 13, dated December 2003). These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License No. DPR–23 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Mail Stop O–12E5, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1785) and the final environmental impact statement (NUREG–1437, Supplement 13) for H. B. Robinson, Unit No. 2, may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), (703) 605–6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, PO Box 371954 Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), (202) 512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this the 19th day of April 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–9489 Filed 4–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act, Meeting

DATE: Weeks of April 26, May 3, 10, 17, 24, 31, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 26, 2004

There are no meetings scheduled for the Week of April 26, 2004.

Week of May 3, 2004—Tentative

Tuesday, May 4, 2004

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Bob Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 10, 2004—Tentative

Monday, May 10, 2004

1 p.m. Briefing on Grid Stability and Offsite Power Issues (Public Meeting) (Contact: Cornelius Holden, 301–415–3036)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, May 11, 2004

9:30 a.m. Briefing on Status of Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Ed Baker, 301–415–2344)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1)

Week of May 17, 2004—Tentative

There are no meetings scheduled for the Week of May 17, 2004.

Week of May 24, 2004—Tentative

Tuesday, May 25, 2004

1:30 p.m. Discussion of Management Issues (Closed—Ex. 2).

Wednesday, May 26, 2004

10:30 a.m. All Employees Meeting (Public Meeting).

1:30 p.m. All Employees Meeting (Public Meeting).

Week of May 31, 2004—Tentative

Wednesday, June 2, 2004

9:30 a.m. Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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: Dave Gamberoni, (301) 415–1651.

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Additional Information

By a vote of 3–0 on April 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), Duke's Appeal of LBP–04–04 (Board Ruling on Standing and Contentions) and the Board's Certified Questions on a Security Contention'' be held April 21, and on less than one week's notice to the public.

''Meeting with Advisory Committee on Reactor Safeguards (ACRS)'' originally scheduled for Thursday, May 6, 2004 was rescheduled for June 2, 2004.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http:://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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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: April 22, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–9596 Filed 4–23–04; 11:20 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 2, 2004, through April 15, 2004. The last biweekly notice was published on April 13, 2004 (69 FR 19561).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor

intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, *see* the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 19, 2004.

Description of amendment request: The licensee proposed to revise Section 4.2, ''Reactivity Control,'' of the Technical Specifications. Specifically, the amendment would revise Subsection 4.2.C, regarding surveillance requirements associated with control rod scram time testing (STT) by: (1) Eliminating unnecessary depressurized STT of non-maintenance-affected control rods, (2) providing the required STT data necessary to apply actual scram times to implement improved minimum critical power ratio operating limits, and (3) eliminating the resulting redundant requirement to test ''eight control rods'' after a reactor scram or other outage. The amendment will also include editorial and pagination changes to accommodate the proposed technical changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change adds new surveillance requirements (SR) to the Minimum Critical Power Ratio (MCPR) Technical Specification (TS) which requires determination of the MCPR operating limit following the completion of scram time testing (STT) of the control rods. Use of the scram speed in determining the MCPR operating limit (*i.e.,* Option B) is an alternative to the current method for determining the operating limit (*i.e.,* Option A). The probability of an accident previously evaluated is unrelated to the MCPR operating limit that is provided to ensure no fuel damage results during anticipated operational occurrences. This is an operational limit to ensure conditions following an assumed accident do not result in fuel failure and therefore do not contribute to the occurrence of an accident. The proposed change eliminates unnecessary depressurized STT of non-maintenance[-]affected control rods and the requirement to test ''eight selected rods'' after a reactor scram or other outage. The requirement to test ''eight selected rods'' is replaced by a new SR to perform periodic STT. No active or passive failure mechanisms that could lead to an accident are affected by this proposed change. Therefore, the proposed change in STT requirements does not significantly increase the probability of an accident previously evaluated.

The proposed change ensures that the appropriate MCPR operating limit is in place. By implementing the correct MCPR operating limit the MCPR safety limit will continue to be ensured. Ensuring the MCPR safety limit is not exceeded will result in prevention of fuel failure. Therefore, since there is no increase in the potential for fuel failure there is no increase in the consequences of any accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a new SR to the MCPR TS which requires determination of the MCPR operating limit following the completion of scram time testing of the control rods. The proposed change eliminates unnecessary depressurized STT of non-maintenance[-]affected rods and the requirement to test ''eight selected rods'' after a reactor scram or other outage. The

requirement to test ''eight selected rods'' is replaced by a new SR to perform periodic STT. The proposed change does not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. No new failures have been created by the addition of the proposed SR and the use of the alternate method for determining the MCPR operating limit.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Use of Option B for determining the MCPR operating limit will result in a reduced operating limit in comparison to the use of Option A. However, a reduction in the operating limit margin does not result in a reduction in the safety margin. The MCPR safety limit remains the same regardless of the method used for determining the operating limit. The proposed change eliminates unnecessary depressurized STT of non-maintenance[-]affected control rods and the requirement to test ''eight selected rods'' after a reactor scram or other outage. The requirement to test ''eight selected rods'' is replaced by a new SR to perform periodic STT. No active or passive failure mechanisms that could adversely impact the consequences of an accident are affected by this proposed change. All analyzed transient results remain well within the design values for structures, systems and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 23, 2004.

Brief description of amendments: The licensee proposed to revise the Technical Specifications (TSs) by eliminating the requirements for hydrogen/oxygen monitors. The proposed amendment supports implementation of the revision to 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on October 16, 2003.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.'' The availability of this TS improvement was published in the **Federal Register** on September 25, 2003 (68 FR 55416), on possible amendments concerning TSTF–447, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. In its application for amendment, the licensee affirmed the applicability of the following NSHC determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee presented an analysis of NSHC by endorsing the model NSHC determination published in 68 FR 55416 (reproduced below):

Criterion 1.—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2 and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [Severe Accident Management Guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2.—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post[-]accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3.—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-

basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI [Three Mile Island], Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in [a] margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 12, 2002, as supplemented March 5, 2004. This notice supersedes the notice that was published on February 18, 2003 (68 FR 7813).

Description of amendments request: The proposed amendments would revise the Technical Specifications to support an expansion of the core flow operating range, including the new automated backup stability protection function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will implement DSS–CD [Detect and Suppress Solution—Confirmation Density] as the long-term stability solution. The DSS–CD solution is designed to identify the power oscillation upon inception and initiate control rod insertion to terminate the oscillations prior to any significant amplitude growth. The DSS–CD provides protection against violation of the Safety Limit Minimum Critical Power Ratio (SLMCPR) for anticipated oscillations. Compliance with General Design Criteria (GDC) 10 and 12 of 10 CFR part 50, Appendix A is accomplished via an automatic action. The DSS–CD introduces an enhanced detection algorithm that detects the inception of power oscillations and generates an earlier power suppression trip signal exclusively based on successive period confirmation recognition. The existing Option III algorithms are retained, with generic setpoints, to provide defense-in-depth protection for unanticipated reactor instability events.

A developing instability event is suppressed by the DSS-CD system with substantial margin to the SLMCPR and no clad damage, with the event terminating in a scram and never developing into an accident. In addition, the DSS–CD solution defense-in-depth features incorporate all the backup scram algorithms plus the licensed scram feature of the existing Option III system. The DSS–CD system does not interact with equipment whose failure could cause an accident. Scram setpoints in the DSS–CD will be established so that analytical limits are met. The reliability of the DSS–CD will meet or exceed that of the existing system. No new challenges to safety-related equipment will result from the DSS–CD solution. Because an instability event would reliably terminate in an early scram without impact on other safety systems, there is no significant increase in the probability of an accident.

The existing requirement to initiate an alternate (*i.e.*, manual) method to detect and suppress thermal hydraulic instability oscillations is expanded to include a requirement to either implement an Automated Backup Stability Protection (ABSP) (*i.e.*, Required Action I.2.1) or exit the operating region most susceptible to rapid onset of Thermal Hydraulic Instability (THI) (*i.e.*, Required Action I.2.2). The ABSP is an automatic reactor scram region, implemented by the Average Power Range Monitor (APRM) flow-biased scram setpoint. It may be used if the Oscillation Power Range Monitoring (OPRM) system is inoperable to allow continued operation within the MELLLA+ [Maximum Extended Load Line Limit Analysis Plus] operating domain. Additionally, a new Required Action I.3 is included. Required Action I.3 ensures that a report is made to the NRC, if DSS–CD is inoperable for 120 days.

To maintain the existing margin between equipment operability requirements and the region of power-flow operation where anticipated events could lead to thermal-hydraulic instability, (1) TS 3.3.1.1, Required Action J.1 is revised to require the plant to be < 18% RTP [rated thermal power] versus < 20% RTP in the event that the OPRM Upscale Function is inoperable and the Required Actions associated with Action I are not completed, and (2) the operability requirement for the OPRM Upscale Function (*i.e.*, TS 3.3.1.1, Table Function 2.f) is changed from ≥ 20% RTP to ≥ 18% RTP. This 5% margin is consistent with and maintains the existing 5% margin operability requirements for the Option III OPRM Upscale operability requirements.

Overall, these changes result in more conservative plant operation. Other changes proposed in this supplement are either in direct support of ABSP or are administrative in nature.

Proper operation of the DSS–CD system does not affect any fission product barrier or Engineered Safety Feature. Thus, the proposed change cannot change the consequences of any accident previously evaluated. As stated above, the DSS–CD solution meets the requirements of GDC 10 and 12 by automatically detecting and suppressing design basis thermal-hydraulic oscillations prior to exceeding the fuel SLMCPR.

Based on the above, the operation of the DSS–CD solution within the framework of the Option III OPRM hardware will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The DSS–CD solution operates within the existing Option III OPRM hardware. No new operating mode, safety-related equipment lineup, accident scenario, system interaction, or equipment failure mode was identified. The ABSP automatic reactor scram region is implemented by adjusting the existing APRM flow-biased scram setpoint. Therefore, the DSS–CD solution will not adversely affect plant equipment.

Because there are no hardware changes, there is no change in the possibility or consequences of a failure. The worst case failure of the equipment is a failure to initiate mitigating action (*i.e.*, scram), but no failure can cause an accident of a new or different kind than any previously evaluated.

Based on the above, the proposed change to the DSS–CD solution will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The DSS–CD solution is designed to identify the power oscillation upon inception and initiate control rod insertion to terminate the oscillations prior to any significant amplitude growth. The DSS–CD solution algorithm will maintain or increase the margin to the SLMCPR for anticipated instability events. The safety analyses in ''Detect And Suppress Solution—Confirmation Density Licensing Topical Report,'' Revision 3 demonstrate the margin to the SLMCPR for postulated bounding stability events. Existing margin between equipment operability requirements and the region of power-flow operation where

anticipated events could lead to thermal-hydraulic instability are maintained. As a result, there is no impact on the SLMCPR identified for an instability event.

The existing requirement to initiate an alternate method to detect and suppress thermal hydraulic instability oscillations is expanded to include a requirement to either implement an ABSP (*i.e.*, Required Action I.2.1) or exit the operating region most susceptible to rapid onset of THI (*i.e.*, Required Action I.2.2). Additionally, a new Required Action I.3 is included. Required Action I.3 ensures that a report is made to the NRC, if DSS–CD is inoperable for 120 days. These change results in more conservative plant operation. Other changes proposed in this supplement are either in direct support of ABSP or are administrative in nature.

The current Option III algorithms (*i.e.*, Period Based Detection, Amplitude Based, and Growth Rate) are retained (with generic setpoints) to provide defense-in-depth protection for unanticipated reactor instability events.

Based on the above, the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: William F. Burton, Acting.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: March 25, 2004.

Description of amendment request: The proposed amendments would allow the use of the methodology described in Framatome-ANP (FRA–ANP) Topical BAW–10169–A ''RSG Plant Safety Analysis—B&W Safety Analysis Methodology for Recirculating Steam Generator Plants'', dated October 1989 for the generation of mass and energy release rates during a Main Steam Line Break accident for Prairie Island Nuclear Generating Plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment will change the Prairie Island Nuclear Generating Plant licensing basis by allowing the use of the methodology described in Framatome-ANP Topical BAW–10169–A ''RSG Plant Safety Analysis—B&W Safety Analysis Methodology for Recirculating Steam Generator Plants'' that utilizes the RELAP5/MOD2–B&W code described in Topical BAW–10164–A ''RELAP5/MOD2–B&W—An Advanced Computer Program for Light-Water Reactor LOCA [loss-of-coolant accident] and Non-LOCA Transient Analysis'' for the generation of predicted mass and energy releases during a Main Steam Line Break accident.

The methodology used to perform an analysis of a main steam line break is not an accident initiator, thus changing the methodology does not increase the probability of an accident.

The mass and energy releases generated by the proposed methodology will be utilized to demonstrate that the design basis limits for fission product barriers are not exceeded. The proposed methodology does not alter the nuclear reactor core, reactor coolant system, or equipment used directly in mitigation of a main steam line break, thus radioactive releases due to a main steam line break accident are not affected by the proposed change in analysis methodology. Therefore, this change does not increase the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment will change the Prairie Island Nuclear Generating Plant licensing basis by allowing the use of the methodology described in Framatome-ANP Topical BAW–10169–A ''RSG Plant Safety Analysis—B&W Safety Analysis Methodology for Recirculating Steam Generator Plants'' that utilizes the RELAP5/MOD2–B&W code described in Topical BAW–10164–A ''RELAP5/MOD2–B&W—An Advanced Computer Program for Light-Water Reactor LOCA and Non-LOCA Transient Analysis'' for the generation of predicted mass and energy releases during a Main Steam Line Break accident.

The analysis of a main steam line break using the proposed methodology does not alter the nuclear reactor core, reactor coolant system, or equipment used directly in mitigation of a main steam line break.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will change the Prairie Island Nuclear Generating Plant licensing basis by allowing the use of the methodology described in Framatome-ANP Topical BAW–10169–A ''RSG Plant Safety Analysis—B&W Safety Analysis Methodology for Recirculating Steam Generator Plants'' that utilizes the RELAP5/MOD2–B&W code described in Topical BAW–10164–A ''RELAP5/MOD2–B&W—An Advanced Computer Program for Light-Water Reactor LOCA and Non-LOCA Transient Analysis'' for the generation of predicted mass and energy releases during a Main Steam Line Break accident.

The proposed licensing basis change will result in a conservative calculation of the mass and energy releases during a Main Steam Line Break accident. This will ensure that there is no reduction in the margin of safety for analyses that utilize the generated mass and energy releases as inputs. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: March 4, 2004.

Description of amendment request: The proposed amendment would revise the SSES 1 and 2 Technical Specification Table 3.3.5.1–1 to clarify that four low pressure coolant injection pump discharge pressure-high channels are required for each automatic depressurization system trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The Technical Specification required number of protection channels is not an initiator to any accident sequence analyzed in the Final Safety Analysis Report (FSAR). As discussed in this request, the change is editorial and involves no change in the number of ADS [Automatic Depressurization System] supporting protection channels

required by the Susquehanna Steam Electric Station (SSES) Technical Specifications (TS). The change does not have any effect on the initiator of any accident sequence analyzed in the Final Safety Analysis Report (FSAR) and does not affect any assumptions associated with the mitigation of accident or transient events. The change does not involve any physical change to structures, systems, or components (SSCs) and does not involve any physical change to structures, systems, or components (SSCs) and does not alter the method of operation or control of SSCs. The current assumptions in the SSES FSAR safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

Operation in accordance with the proposed Technical Specification (TS) continues to ensure that the plant response to analyzed accidents remains capable of performing as described in the FSAR. Therefore, the mitigative functions supported by the system continue to provide the protection assumed by the analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change does not alter the manner in which equipment operation is initiated, nor are the function demands on credited equipment be[ing] changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter the assumptions made in the safety analysis and licensing basis.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The change is editorial and involves no technical changes to the Susquehanna Steam Electric Station (SSES) Technical Specifications (TS). Therefore the plant response to analyzed events continues to provide the margin of safety assumed by the analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: March 5, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement (SR) 3.6.4.1.3 to require that only one secondary containment access door in each access opening be verified closed. In addition, this SR allows entry and exit access between required secondary containment zones that have a single door.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The Technical Specification Surveillance being revised, which verifies the status of the secondary containment access doors, is not an initiator to any accident sequence analyzed in the Final Safety Analysis Report (FSAR). The proposed change relaxes the acceptance criteria of this Surveillance such that maintenance on one of two airlock access doors can be performed. However, requiring that at least one door is closed, in conjunction with the continued requirement to maintain the building at a negative pressure, continues to assure that the secondary containment barrier is maintained operable. This provides adequate assurance that the secondary containment is capable of performing the accident mitigation function assumed in the accident analyses. As a result, the consequences of any accident previously evaluated are not significantly affected.

The Note, which was added to the Technical Specifications, provides clarification and precludes a conflict with the explicit wording of SR 3.6.4.1.3. Since this Note is consistent with the intent as reflected in the Bases and with the prior SSES Technical Specifications, the change is considered editorial and reflects an administrative presentation preference and not a technical change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change does not alter the manner in which equipment operation is initiated, nor are the function demands on credited equipment changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced.

The Note, which was added to the Technical Specifications, provides clarification and precludes a conflict with the explicit wording of SR 3.6.4.1.3. Since this Note is consistent with the intent as reflected in the Bases and with the prior SSES Technical Specifications, the change is considered editorial and reflects an administrative presentation preference and not a technical change.

The change does not alter the assumptions made in the safety analysis and licensing basis.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The change could allow additional time for one of two airlock doors to be open for maintenance. However, the margin of safety is maintained by the continued closure of the remaining airlock door (as is currently allowed for normal entry and exit) and the continued requirement to be able to maintain the building at a negative pressure.

The Note, which was added to the Technical Specifications, provides clarification and precludes a conflict with the explicit wording of SR 3.6.4.1.3. Since this Note is consistent with the intent as reflected in the Bases and with the prior SSES Technical Specifications, the change is considered editorial and reflects an administrative presentation preference and not a technical change.

Therefore, the plant response to analyzed events continues to provide the margin of safety assumed by the analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 2 and 3, Limestone County, Alabama

Date of amendment request: July 31, 2002, as supplemented by letters dated December 9, 2002, February 12, 2003, March 26, 2003, July 11, 2003, and July 17, 2003.

Description of amendment request: The proposed amendments request full implementation of an alternative source term (AST) for the Units 1, 2, and 3 operating licenses. The amendments adopt the AST methodology by revising the current accident source term and replacing it with an accident source term as prescribed in 10 CFR 50.67. The submittals also propose to revise/delete the Technical Specification (TS) Sections associated with control emergency ventilation (CREV), standby gas treatment (SGT), standby liquid control (SLC), and secondary containment systems. Additionally, the submittals request modification of the licensing and design basis to reflect the application of the AST methodology and the function of the SLC system, and deletion of a license condition for Units 2 and 3, which all the actions have been completed.

The supplements to the original application include the withdrawal of the request to delete one of the TS Sections described above, associated with the absorption of elemental iodine by the SGT and CREV systems charcoal filters. Also the supplements add a new TS Section to require verification that the minimum fuel decay period has passed prior to moving fuel after the reactor is shut down. The licensee indicated that these modifications/deletions do not affect the originally published no significant hazards consideration. The original no hazards consideration is reproduced below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The AST and those plant systems affected by implementing AST do not initiate DBAs [design-basis accidents]. The AST does not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences. The implementation of the AST has been evaluated in the analyses for the limiting DBAs at BFN. The equipment affected by the proposed change is mitigative in nature and relied upon following an accident. The proposed changes to the TS do revise certain performance requirements. However, these changes will not involve a revision to the parameters or conditions that could contribute to the initiation of a design basis accident discussed in Chapter 14 of the BFN Updated Final Safety Analysis Report.

Plant specific radiological analyses have been performed and, based on the results of these analyses, it has been demonstrated that the dose consequences of the limiting events considered in the analyses are within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67, Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1. Therefore, the proposed amendment does not result in a significant increase in the consequences or a significant increase in the probability of any previously evaluated accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of AST does not alter any design basis accident initiators. These changes do not affect the design function or mode of operations of systems, structures, or components in the facility prior to a postulated accident. Since systems, structures, and components are operated essentially no differently after the AST implementation, no new failure modes are created by this proposed change. Therefore, the proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The changes proposed are associated with a revision to the licensing basis for BFN. The results of accident analyses revised in support of the proposed change are subject to the acceptance criteria in 10 CFR 50.67. The analyzed events have been carefully selected, and the analyses supporting this submittal have been performed using approved methodologies. The dose consequences of these limiting events are within the acceptance criteria provided by the regulatory guidance as presented in 10 CFR 50.67, Regulatory Guide 1.183, and SRP 15.0.1.

Therefore, because the proposed changes continue to result in dose consequences within the applicable regulatory limits, the changes are considered to not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: William F. Burton (Acting).

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 3, 2004 (TSC 03–10).

Description of amendment request: The proposed amendment would revise the Updated Final Safety Analysis Report (UFSAR) and the Technical Specification Bases description of the seismic qualification of round flexible ducting, triangular ducting, and associated air bars installed as part of the suspended ceiling air delivery system in the main control room.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The design function of the MCR [main control room] ducting system is to support pressurization and cooling of the control room during normal and accident conditions. The design function of the MCR suspended ceiling is to remain in place during and subsequent to an accident, support the triangular and flexible ducts, and not damage safety-related equipment. The MCR ducting, including the classification and methodology changes, is a passive feature and does not act as an accident initiator, *i.e.*, failure of the ducting would not initiate a design basis accident. The MCR suspended ceiling has been qualified such that it will remain in place and perform its safety function during and after an accident. Consequently, the changes associated with the MCR ducting and suspended ceiling do not affect the frequency of occurrence for accidents previously evaluated in the UFSAR.

For the principal design basis accidents, loss of coolant accident (LOCA), internal flood, steam generator tube rupture (SGTR), main steam line break (MSLB), etc., the integrity of the MCR HVAC [heating, ventilation and air conditioning] system, including the suspended ceiling, will not be compromised. These accidents do not have a structural effect on the MCR. This means that for radiological or toxic chemical accidents, the ability to both pressurize and maintain MCR temperatures within the design limits is unaffected by the limited quality and seismic requirements for the flexible and triangular ducting.

An accident that involves a fire that affects the MCR or the habitability of the MCR was not a consideration for the qualification of the air distribution components. A fire of this nature will result in plant operation from the Auxiliary Control Room (ACR) which is supported by a separate HVAC system.

The physical effects of an earthquake (including the design basis SSE) is the only event in which the design basis for the MCR HVAC is potentially challenged. An evaluation by an industry seismic expert shows that the ducting and suspended ceiling will remain in place, will retain their structural integrity such that flow will not be impeded, and the ducting pressure boundary will not be lost. Thus, reducing the QA [quality assurance] and seismic qualification requirements for the MCR ducting and changing the method of seismic qualification will not result in loss of safety function for any design basis accident or event. Thus, the accident dose as previously evaluated in the UFSAR is not affected by the proposed license amendment.

Based on the above discussion, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The MCR ducting addressed by the proposed amendment is not an accident initiator; *i.e.*, failure of the ducting will not initiate a design basis accident. In addition, the subject ducting and suspended ceiling have been evaluated and a determination has been made that they will continue to perform their safety functions during normal and accident conditions. Consequently, this activity does not create a possibility of a new or different type of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The changes addressed in TVA' s proposed amendment are associated with changes in QA requirements and seismic qualification methodology for safety related air delivery components and for the suspended ceiling. The change does not affect specific HVAC equipment safety limits, design limits, set points, or other critical parameters. In addition, the new seismic analysis methodology and limited QA requirements ensure that these components will continue to perform their safety functions during normal and accident conditions. The previously implied margin of safety against structural or functional failure of the air delivery components or suspended ceiling during and after a design basis SSE [safe-shutdown earthquake] has not been reduced. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: William F. Burton, Acting.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: April 7, 2004.

Description of amendment request: The proposed amendment would revise the maximum ultimate heat sink (UHS) temperature by revising the Technical Specification (TS) maximum essential raw cooling water (ERCW) temperature limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to increase the UHS maximum temperature will not adversely alter the function, design, or operating practices for plant systems or components. The UHS is utilized to remove heat loads from plant systems during normal and accident conditions. This function is not expected or postulated to result in the generation of any accident and continues to adequately satisfy the associated safety functions with the proposed changes. Therefore, the probability of an accident presently evaluated in the safety analyses will not be increased. With the exception of re-gearing the shutdown board room chiller compressors, no other plant equipment must be altered as a result of this change. Re-gearing of the shutdown board room chillers will ensure their continued performance in accordance with design concurrent with the increased UHS temperature. The heat loads that the UHS is designed to accommodate have been evaluated for functionality with the higher temperature limits. The result of these evaluations is that there is existing margin associated with the systems that utilize the UHS for normal and accident conditions. These margins are sufficient to accommodate the postulated normal and accident heat loads with the proposed changes to the UHS. Since the safety functions of the UHS are maintained, the systems that ensure acceptable offsite dose consequences will continue to operate as designed. The change in the maximum calculated containment pressure associated with the design basis loss of coolant accident remains below the ASME [American Society of Mechanical Engineers] Code design internal pressure. The change to clarify the maximum allowable internal containment pressure is administrative consistent with present wording in the TS Bases. Therefore, the consequence of any accident will be the same as those previously analyzed.

Therefore, since the UHS safety function will continue to meet accident mitigation requirements and limit dose consequences to acceptable levels, TVA has concluded that the proposed TS change does not involve a significant increase [in] the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The UHS function provides accident mitigation capabilities and serves as a heat sink for normal and upset plant conditions; the UHS is not an initiator of any accident. By allowing the proposed change in the UHS temperature requirements, only the parameters for UHS operation are changed while the safety functions of the UHS and systems that transfer the heat sink capability continue to be maintained. The proposed change does not impact the response of the systems and components assumed in the safety analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change has been evaluated for systems that are needed to support accident mitigation functions as well as normal operational evolutions. Operational margins were found to exist in the systems that utilize the UHS capabilities such that these proposed changes will not result in the loss of any safety function necessary for normal or accident conditions. The ERCW system has excess flow margins that will accommodate the increased flows necessary for the proposed temperature increase. While operating margins have been reduced by the proposed changes, safety margins have been maintained as assumed in the accident analyses for postulated events. The proposed change results in an increase in the maximum calculated containment peak pressure. However, the change in the maximum calculated containment peak pressure associated with the design basis LOCA [loss-of-coolant accident] is a small percentage of the margin between the current maximum calculated containment peak pressure and the ASME Code design internal pressure. The change to clarify the maximum allowable internal containment pressure is administrative. This aspect of the proposed change does not involve a significant reduction in a margin of safety. Additionally, the proposed changes do not require any further modification (the shutdown board room chiller will be re-geared) of component setpoints or operating provisions that are necessary to maintain margins of safety established by the WBN design. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: William F. Burton, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagordo County, Texas

Date of amendment request: March 4, 2004.

Brief description of amendment request: The proposed amendment would allow South Texas Project (STP) Unit 2 to change modes with standby diesel generator 22 inoperable. This is a one-time change that would expire 14 days after entering Mode 4 on restart from the STP Unit 2 Spring 2002 refueling outage.

*Date of publication of individual notice in **Federal Register:*** March 23, 2004.

Expiration date of individual notice: April 22, 2004 (public comments), and May 24, 2004 (hearing requests).

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagordo County, Texas

Date of amendment request: March 18, 2004.

Brief description of amendment request: These amendments revise Technical Specification (TS) Surveillance Requirement 4.7.7.e.3 to add a footnote that allows an evaluation for points that do not meet the 1/8 inch Water Gauge criterion of the current TS. These amendments close out Notice of Enforcement Discretion No. 04–6–001, which the Commission granted on March 23, 2004.

*Date of publication of individual notice in **Federal Register:*** April 5, 2004.

Expiration date of individual notice: April 19, 2004 (public comments), and June 4, 2004 (hearing requests).

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 23, 2004.

Description of amendments request: To allow both trains of control room air-conditioning system to be inoperable for up to 7 days, provided control room temperatures are verified every 4 hours to be less than or equal to 90 degrees Fahrenheit.

*Date of publication of individual notice in the **Federal Register:*** April 14, 2004 (69 FR 19880).

Expiration date of individual notice: May 14, 2004.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 14, 2003, as supplemented December 5, 2003, and February 12, 2004.

Brief description of amendments: These amendments change the Surveillance Requirement 3.6.6.8 to verify each containment spray nozzle is unobstructed only following maintenance that could result in nozzle blockage.

Date of issuance: April 8, 2004.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 264 and 241.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 19, 2003 (68 FR 49814). The supplements dated December 5, 2003, and February 12, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 8, 2004.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: February 25, 2004.

Brief description of amendments: These amendments changes the implementation date for the new cooldown rates for pressure temperature

limits established by Amendment Nos. 261 and 238 for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, respectively, from 120 days after issuance, to July 1, 2004.

Date of issuance: April 5, 2004.

Effective date: As of the date of issuance, immediately changing the implementation date of Amendment Nos. 261 and 238 to July 1, 2004.

Amendment Nos.: 263 and 240.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2004 (69 FR 10487). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 5, 2004.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 20, 2003; as supplemented on March 31, April 17, June 11, July 21, and December 11, 2003; and January 20, February 10, and March 11, 2004.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to reflect an expanded operating domain resulting from the implementation of the Average Power Range Monitor, Rod Block Monitor TSs/Maximum Extended Load Line Limit Analysis (ARTS/MELLLA).

Date of Issuance: April 14, 2004.

Effective date: As of the date of issuance, and shall be implemented at the start of operating cycle 24.

Amendment No.: 219.

Facility Operating License No. DPR–28: Amendment revised the TS.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18276). The licensee's March 31, April 17, June 11, July 21, and December 11, 2003; and January 20, February 10, and March 11, 2004, letters provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 14, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi; Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana; and Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of application for amendment: November 6, 2002, as supplemented by letters dated November 18, 2003, and January 30, 2004.

Brief description of amendment: The amendment would revise the Facility Operating Licenses, Appendix B, Environmental Protection Plan (EPP) (Non-Radiological) for the respective plants.

Date of issuance: April 12, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 165, Docket No. 50–416, NPF–29; 138, Docket No. 50–458, NPF–47; 193, Docket No. 50–382, NPF–38.

Facility Operating License Nos. NPF–29, NPF–47, and NPF–38: The amendments revise the EPPs for the respective plants.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75872).

The licensee enclosed a revised no significant hazards consideration (NSHC) determination with the supplemental letter dated November 18, 2003. This revised NSHC determination contained minor wording changes as compared with the NSHC determination included in the original application dated November 6, 2002, changes made to reflect the new EPP changes, and did not expand the scope of the application as originally noticed, and did not change the conclusions of the NSHC determination as published in the **Federal Register** on December 10, 2002 (67 FR 75872). The January 30, 2004, supplemental letter provided further clarification to the November 18, 2003, supplemental letter that did not change the conclusion of the NSHC determination published on December 10, 2002.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 12, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 20, 2003, as supplemented by letter dated December 12, 2003.

Brief description of amendment: The amendment authorizes changes to the surveillance requirements for containment integrated leak rate testing in TS 4.4.a, ''Integrated Leak Rate Tests (Type A).''

Date of issuance: April 6, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 173.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 22, 2003 (68 FR 43391) . The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: March 27, 2003, as supplemented by letters dated October 30, and December 19, 2003.

Brief description of amendments: The proposed amendment would approve a selective scope application of an alternative source term for fuel-handling accidents. Specifically, the amendments would revise Technical Specification 3.9.3, ''Containment Penetrations,'' to (1) change the Applicability statement to ''During movement of recently irradiated fuel assemblies within containment,'' and (2) modify the Required Action for Condition A to eliminate the requirement to suspend core alterations and add the requirement to suspend movement of recently irradiated fuel assemblies within containment if one or more containment penetrations are not in the required status.

Date of issuance: April 2, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 213 and 218.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 13, 2003 (68 FR 25656). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 2004.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 25, 2003, as supplemented September 9, 2003.

Brief description of amendment: The amendment added an allowed-outage time for Engineered Safety Features Actuation System Instrumentation channels to be out of service in a bypassed state.

Date of issuance: April 5, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 167.

Facility Operating License No. NPF–12: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 1, 2003 (68 FR 15762). The September 9, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 2004.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company (STPNOC), Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 18, 2004, as supplemented by letters dated April 7 and 13, 2004.

Brief description of amendments: The amendments revise TS Surveillance Requirement (SR) 4.7.7.e.3 to add a footnote that allows use of alternate criteria for those measured points at positive pressure but that do not meet the ⅛ inch Water Gauge criterion of the current TS. In addition the word ''that'' in the second line of the original text of SR 4.7.7.e.3 is changed to ''than'' to correct an existing typographical error. These amendments supersede Notice of Enforcement Discretion (NOED) No. 04–6–001, which the Commission staff granted to STPNOC on March 23, 2004.

Date of issuance: April 15, 2004.

Effective date: As of the date of issuance.

Amendment Nos.: Unit 1–161; Unit 2–151.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC):

Yes. A notice was published in the **Federal Register** on April 5, 2004 (69 FR 17718). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing within 60 days from the date of publication, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment. The supplements dated April 7 and 13, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 2004.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: April 11, 2003, as supplemented by the October 2, 2003, meeting, and a letter dated February 20, 2004.

Description of amendment request: The amendments revised Technical Specification (TS) Table 3.3.5.1–1 which will result in a change to the Updated Final Safety Analysis Report (UFSAR), Table 6.5–3.

Date of issuance: April 1, 2004.

Effective date: Date of issuance, to be implemented within 60 days for Unit 1, during Cycle 13 Refueling Outage for Unit 2 , and during Cycle 12 Refueling Outage for Unit 3.

Amendment Nos.: 250, 289 & 248.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the TSs which will result in a change the UFSAR, Table 6.5–3.

Date of initial notice in ***Federal Register:*** May 27, 2003 (68 FR 28857). The October 2, 2003, meeting, and the February 20, 2004, letter, provided clarifying information that did not change the scope of the original request or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 2004.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 27, 2003, as supplemented by letters dated December 9, 2003, January 14 and April 5, 2004.

Brief description of amendment: The amendment approves the application of leak-before-break methodology for the accumulator and residual heat removal lines and installation of an opening in the secondary shield wall in terms of the effect of the opening on occupational exposure. The shield wall opening is related to plant modifications that would facilitate maintenance on the replacement steam generators to be installed in Refueling Outage 14 (Fall 2005).

Date of issuance: April 12, 2004.

Effective date: April 12, 2004, and shall be implemented prior to entering Mode 4 during the startup from Refueling Outage 13 which is scheduled for the Spring of 2004.

Amendment No.: 161.

Facility Operating License No. NPF–30: The amendment revised the Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** July 22, 2003 (68 FR 43397).

The December 9, 2003, January 14 and April 5, 2004, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 2004.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket No. 50–339, North Anna Power Station, Unit 2, Louisa County, Virginia

Date of application for amendment: March 28, 2002, as supplemented by letters dated May 13, June 19, July 9, July 25, August 2, August 16, and November 15, 2002, May 6, May 9, May 27, June 11 (2 letters), July 18, August 20, August 26, September 4, September 5, September 22, September 26 (2

letters), November 10, December 8, and December 17, 2003, and January 6, January 22 (2 letters), February 12, February 13, and March 1, 2004. The November 15, 2002, submittal replaced the submittals dated July 9, July 25, and August 16, 2002.

Brief description of amendment: This amendment revises Improved Technical Specification Sections 2.1, 4.2, and 5.6.5 in order to allow Virginia Electric and Power Company to implement Framatome ANP Advanced Mark-BW fuel at North Anna Power Station, Unit 2.

Date of issuance: April 1, 2004.

Effective date: As of the date of issuance and shall be implemented prior to the initiation of core onload during Refueling Outage 16 (Spring 2004).

Amendment No.: 216.

Renewed Facility Operating License No. NPF–7: Amendment changes the Improved Technical Specifications.

*Date of initial notice in **Federal Register:*** July 22, 2003 (68 FR 43397). The supplements dated July 18, August 20, August 26, September 4, September 5, September 22, September 26 (2 letters), November 10, December 8, and December 17, 2003, and January 6, January 22 (2 letters), February 12, February 13, and March 1, 2004, contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 2004.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22.

Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1–

800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Pacific Gas and Electric Company, Docket No. 50–275, Diablo Canyon Power Plant, Unit No. 1, San Luis Obispo County, California

Date of application for amendment: April 2, 2004, as superseded by application dated April 8, 2004.

Description of amendment request: The amendment revises the Technical Specification 3.3.5, ''Loss of Power (LOP) Diesel Generator (DG) Start Instrumentation,'' to allow performance of Surveillance Requirement (SR) 3.3.5.2 for the trip actuation device operational test, prior to first entry into MODE 4, by adding a note to the FREQUENCY column of SR 3.3.5.2 on a one-time basis.

Date of issuance: April 15, 2004.

Effective date: April 15, 2004, and shall be implemented within 10 days from the date of issuance.

Amendment No.: 165.

Facility Operating License No. DPR–80: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. A public notice was published in the San Luis Obispo Tribune on April 13 and 14, 2004. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

final NSHC determination are contained in a safety evaluation dated April 15, 2004.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Dated in Rockville, Maryland, this 19th day of April, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–9225 Filed 4–26–04; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Termination of Single-Employer Plans, Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget (''OMB'') extend approval (with modifications), under the Paperwork Reduction Act of 1995, of a collection of information in its regulations on Termination of Single-Employer Plans and Missing Participants, and implementing forms and instructions (OMB control number 1212–0036; expires August 31, 2004). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by June 28, 2004.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *www.pbgc.gov/paperwork*, or by fax to (202) 326–4112. The PBGC will make all comments available on its Web site, *www.pbgc.gov*.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040.) The regulations and forms and instructions relating to this collection of information may be accessed on the PBGC's Web site at *www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; (202) 326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and the PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to the PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and the PBGC's missing participants regulation (29 CFR part 4050). The PBGC is making clarifying, simplifying, editorial, and other changes to the existing forms and instructions.

The PBGC estimates that 1,175 plan administrators will be subject to the collection of information requirements in the PBGC's termination and missing participants regulations and implementing forms and instructions each year, and that the total annual burden of complying with these requirements is 1,743 hours and $1,973,075. (Much of the work associated with terminating a plan is performed for purposes other than meeting these requirements.)

Comments on these collection of information requirements may address (among other things)—

- Whether the collection of information is necessary for the proper performance of the functions of the PBGC, including whether the information will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information to be collected; and
- Minimizing 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.

Issued in Washington, DC, this 21st day of April, 2004.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 04–9529 Filed 4–26–04; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to System of Records

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of a revision of a Privacy Act System of Records.

SUMMARY: The purpose of this document is to give notice of changes to several categories of information in RRB–42, Uncollectible Benefit Overpayment Accounts. The RRB proposes to expand the scope of the system to include employee salary overpayments. Currently the system includes only benefit payments.

DATES: The changes to this System of Records shall become effective as proposed without further notice in 40 calendar days from the date of this publication unless comments are received before this date that would result in further modifications.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 N. Rush St., Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 N. Rush St., Chicago, Illinois 60611–2092, telephone number (312) 751–4548, e-mail address, *blommlf@rrb.gov*.

SUPPLEMENTARY INFORMATION: The RRB proposes to expand the scope of the system to include employee salary overpayments. Currently the system includes only benefit overpayments.

This proposed expansion requires revision in the following categories of information: Name; categories of individuals covered by the system; categories of records in the system; authority for maintenance of the system; and purpose(s). In addition, two routine uses need to be revised. It is anticipated that less than five salary overpayment accounts will be added each year.

I. Discussion of Revised Routine Uses

Routine use ''a'' is being revised solely to reflect that debts arising from salary overpayments may now be disclosed to private collection agencies for the purpose of recovery of those overpayments.

Routine use ''c'' is being revised to add salary overpayments to benefit overpayments and to delete the reference to debts arising from benefits paid under the Regional Rail Reorganization Act of 1973. Reference to this Act is no longer valid because all debts in the system were written off as uncollectible and no new debts are possible.

II. Altered System Report

On April 21, 2004, the Railroad Retirement Board filed an altered system report for this system with the chairmen of the designated Senate and House committees and with the Office of Management and Budget. This was done to comply with section 3 of the Privacy Act of 1974 and OMB Circular A–130, Appendix I.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–42

The following sections in RRB–42 are revised to read as follows:

SYSTEM NAME:

Overpayment Accounts.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were overpaid in the benefits or salaries they received from the Railroad Retirement Board. Benefits are further delineated in the following two categories:

—Individuals receiving the following types of annuities, payable under the Railroad Retirement Act: railroad retirement, disability, supplemental, and survivor.

—Individuals receiving unemployment or sickness insurance benefits payable under the Railroad Unemployment Insurance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number, Railroad Retirement claim number, whether salary or benefit and if benefit type of benefit previously paid, amount of overpayment, debt identification number, cause of overpayment, source of overpayment, original debt amount, current balance of debt, installment repayment history, recurring accounts receivable administrative offset history, waiver, reconsideration and debt appeal status, general billing, dunning, referral, collection, and payment history, amount of interest and penalties assessed and collected, name and address of debt collection agency or Federal agency to which uncollectible account is referred for collection, date of such referral, amount collected, and name and address of consumer reporting agencies to which debt information is disclosed and date of such referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)); section 12(1) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(1)); Public Law 97–92, Joint Resolution; Pub. L. 97–365 (Debt Collection Act of 1982); Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*); Pub. L. 104–134 (Debt Collection Improvement Act of 1996); 5 U.S.C. section 5514 and 20 CFR part 361.

PURPOSE(S):

The records in this system are created, monitored and maintained to enable the Railroad Retirement Board to fulfill regulatory and statutory fiduciary responsibilities to its trust funds, the individuals to whom it pays benefits or salaries and the Federal Government as directed under the Railroad Unemployment Insurance Act, Debt Collection Act of 1982, Federal Claims Collection Act, and Debt Collection Improvement Act of 1996. These responsibilities include: accurate and timely determination of debt; sending timely, accurate notice of debt with correct repayment and rights options; taking correct and timely action when rights/appeals have been requested; assessing appropriate charges; using all appropriate collection tools; releasing required, accurate reminder notices; and correctly and timely entering all recovery, write-off, and waiver offsets to debts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Paragraph ''a'' is revised to read as follows:

a. Overpayment amounts, history of collectible, history of collection efforts and identification information (name, address—including IRS address information—Social Security number, Railroad Retirement Claim number), whether salary or benefit overpayment, and if benefit, type of benefit may be disclosed to private collection agencies for the purpose of recovering overpayments.

* * * * *

Paragraph c is revised to read as follows:

c. For information related to overpayments of salaries paid to RRB employees, in the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; for information related to overpayments paid under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, in the event this system of records maintained by the Railroad Retirement Board to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in furtherance of the interest of the subject individual.

[FR Doc. 04–9498 Filed 4–26–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for MOB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 15c3–1f;—SEC File No. 270–440;—OMB Control No. 3235–0496.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension on the following rule.

Appendix F requires a broker-dealer choosing to register, upon Commission approval, as an OTC derivative dealer to develop and maintain an internal risk management system based on Value-at-Risk (''VAR'') models. Appendix F also requires the OTC derivatives dealer to notify Commission staff of the system and of certain other periodic information including when the VAR model deviates from the actual performance of the OTC derivatives dealer's portfolio. It is anticipated that approximately six (6) broker-dealers will spend 1,000 hours per year complying with Rule 15c3–1f. The total burden is estimated to be approximately 6,000 hours.

The records are required to be kept pursuant to Appendix F and results of periodic reviews conducted pursuant to Rule 15c3–4 generally must be preserved under Rule 17a–4 of the Exchange Act (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an accessible place. The Commission will not generally publish or make available to any person notice or reports received pursuant to the Rule. The statutory basis for the Commission's refusal to disclose such information to the public is the exemption contained in Section (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, which essentially provides that the requirement of public dissemination does not apply to commercial or financial information which is privileged or confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or via e-mail at: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 20, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9487 Filed 4–26–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12865]

Issuer Delisting; Notice of Application of FiberMark, Inc. to Withdraw Its Common Stock, $.001 Par Value, From Listing and Registration on the American Stock Exchange LLC

April 21, 2004.

FiberMark, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

On April 2, 2004, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Issuer's Security from listing on the Amex and to quote the Company's Security on the OTC Bulletin Board (''OTCBB''). The Board states that its decision to withdraw the Security from listing and registration on the Amex was based on the fact that the Issuer's Security fell below and Amex's listing standards and the Issuer opted to voluntarily delist its Security. The Issuer states that trading in the Company's Security ceased on the Amex at the close of business on April 12, 2004 and quotation of the Security on the OTCBB began on April 13, 2004.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 14, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–12865. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–9521 Filed 4–26–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03876]

Issuer Delisting; Notice of Application of Holly Corporation To Withdraw its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

April 21, 2004.

Holly Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors of the Issuer unanimously approved a resolution on

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[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78l(d).
[2] 17 CFR 240.12d2–2(d).

March 25, 2004, to withdraw the Issuer's Security from listing on the Amex and to list the Security on the New York Stock Exchange (''NYSE''). The Board states that it determined that it is in the best interest of the Issuer to delist the Security from the Amex and to list the Security on the NYSE to avoid direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its continued listing on the NYSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before May 14, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–03876. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–9520 Filed 4–26–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 781(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11181]

Issuer Delisting; Notice of Application of Iris International, Inc., To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

April 21, 2004.

Iris International, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer adopted a resolution on February 15, 2004, approving an application to seek quotation of the Issuer's Security on the Nasdaq National Market System (''Nasdaq NMS''). The Board believes moving to the Nasdaq NMS will provide a broader investor audience, improved liquidity for stockholders and international visibility for the Security.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 14, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–11181. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–9519 Filed 4–26–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49584; File No. SR–CBOE–2004–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Extend the Exchange's Automated Limit Order Display Facility Pilot Program Until October 19, 2004

April 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the Exchange's automated limit order display facility (''Autobook'') pilot until October 19, 2004 or such earlier time as the Commission may approve Autobook on a permanent basis. The text of the proposed rule change appears below. Additions are in *italics*. Deletions are in [brackets].

* * * * *

Rule 8.85 DPM Obligations

(a) No change.

(b)(i)–(vi) No Change.

(vii) *Autobook Pilot.* Maintain and keep active on the DPM's PAR workstation at all times the automated limit order display facility (''Autobook'') provided by the Exchange. The appropriate Exchange Floor Procedure Committee will determine the Autobook timer in all classes under that Committee's jurisdiction. A DPM may deactivate Autobook as to a class or classes provided that Floor Official approval is obtained. The DPM must obtain such approval no later than three minutes after deactivation. The Autobook Pilot expires on [April 21, 2004] *October 19, 2004*, or such earlier time as the Commission has approved Autobook on a permanent basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraph (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraph (b)(i) through (b)(vii) of this Rule shall govern.

(c)–(e) No change.

* * * Interpretations and Policies:

.01–.04 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 18, 2003, the Commission approved, on a pilot basis, the implementation of Autobook.[3] Autobook is an enhancement to the Designated Primary Market Maker's (''DPM'') PAR workstation that automatically facilitates the entry of eligible customer limit orders into the limit order book at the end of a configurable period of time provided such limit orders have not previously been addressed manually by the DPM. Specifically, Autobook assists and facilitates DPMs' compliance with their regulatory obligation and the display of eligible customer limit orders in the disseminated quotations as required by CBOE rules and Regulatory Circulars.[4]

The Autobook pilot is due to expire on April 21, 2004. The Exchange proposes to extend the Autobook pilot until October 19, 2004 or such earlier time as the Commission has approved Autobook on a permanent basis.

The Exchange intends to submit a rule filing to the Commission proposing permanent approval of Autobook in the next several weeks. Therefore, the Exchange proposes to extend the Autobook pilot program until October 19, 2004 so that the pilot may continue in effect while the Commission considers the Exchange's upcoming permanent approval proposal.

2. Statutory Basis

The Exchange believes that because Autobook assists and facilitates DPMs' compliance with their regulatory obligations and the display of eligible customer limit orders in the disseminated quotations as required by CBOE rules and Regulatory Circulars, the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Furthermore, the Exchange believes that the proposed changes are consistent with the Act's requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to April 21, 2004, so that the Autobook pilot program may continue without interruption after it would have otherwise expired on April 21, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to April 21, 2004,[11] and, therefore, the proposal is effective and operative on that date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[3] *See* Securities Exchange Act Release No. 47701 (April 18, 2003), 68 FR 22426 (April 28, 2003) (Order approving SR-CBOE–2003–16 on a pilot program basis until April 21, 2004) (''Autobook Pilot Release''). Autobook is governed by CBOE Rule 8.85(b)(vii). The Commission notes that the representations made by CBOE in the Autobook Pilot Release regarding a DPM's ability to turn off Autobook, impermissibly rely on Autobook and CBOE's surveillance for impermissible reliance on Autobook continue to apply.

[4] Currently, CBOE's DPMs are required to execute or book 95% of all eligible customer limit orders ''immediately'' but not later than 30-seconds after receipt under normal market conditions.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the five-day pre-filing notice requirement and accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Number SR–CBOE–2004–22 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–22 and should be submitted on or before May 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–9522 Filed 4–26–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49588; File No. SR–CBOE–2004–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc., Relating to the $5 Quotation Spread Pilot Program

April 21, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 20, 2004, the CBOE filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In January 2004, the CBOE implemented a six-month pilot program (''Pilot Program''), which expires on June 29, 2004, that permits quote spread parameters of up to $5, regardless of the price of the bid, for up to 200 options classes traded on the CBOE's Hybrid Trading System (''Hybrid'').[4] The CBOE subsequently expanded the Pilot Program to include all options classes traded on Hybrid.[5] The CBOE proposes to amend the Pilot Program to limit the applicability of the $5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically on the Hybrid system. The text of the proposed rule change appears below; additions are *italicized*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, CBOE, to Nancy Sanow, Division of Market Regulation, Commission, dated April 19, 2004 (''Amendment No. 1''). Amendment No. 1 revises the text of the proposed rule to change a reference in CBOE Rule 8.7(b)(iv)(A) from ''subparagraph (iv)(a)'' to ''subparagraph (iv)(A).''

[4] *See* Securities Exchange Act Release No. 49153 (January 29, 2004), 69 FR 5620 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2003–50) (''Pilot Program Notice'').

[5] *See* Securities Exchange Act Release No. 49318 (February 25, 2004), 69 FR 10085 (March 3, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–10) (''February 2004 Notice'').

8.7 Obligations of Market Makers

(a) No change.

(b)

(i)–(iii) No change.

(iv) To price options contracts fairly by, among other things, bidding and/or offering so as to create differences of no more than 0.25 between the bid and offer for each option contract for which the bid is less than $2, no more than $0.40 where the bid is at least $2 but does not exceed $5, no more than $0.50 where the bid is more than $5 but does not exceed $10, no more than $0.80 where the bid is more than $10 but does not exceed $20, and no more than $1 where the bid is more than $20, provided that the appropriate Market Performance Committee may establish differences other than the above for one or more options series. The bid/ask differentials stated above shall not apply to in-the-money series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

(A) For a six month period expiring on June 29, 2004, options on classes trading on the Hybrid system may be quoted *electronically* with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The $5 quote widths shall only apply to classes trading on the Hybrid system and only following the opening rotation in each security (*i.e.*, the widths specified in paragraph (b)(iv) above shall apply during opening rotation). *Quotes given in open outcry in Hybrid classes may not be quoted with $5 widths and instead must comply with the legal width requirements (e.g., no more than 0.25 between the bid and offer for each option contract for which the bid is less than $2) described in paragraph (iv) and not subparagraph (iv)(A).*

Interpretations and Policies * * *

No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the

most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program became effective in January 2004 and designated 200 options classes traded on Hybrid that, for a six-month pilot period, could be quoted with a difference not to exceed $5 between the bid and the offer, regardless of the price of the bid.[6] In February 2004, the CBOE expanded the number of options classes included in the Pilot Program from 200 options classes traded on Hybrid to all options classes traded on Hybrid.[7]

The CBOE proposes to amend the Pilot Program to limit its application to electronic quoting only. Under the proposal, market makers would continue to be eligible to submit electronic quotes in Hybrid classes, provided that those quotes do not exceed $5 between the bid and the ask price. In open outcry, however, market makers in those same classes would be required to give verbal quotes that comply with the current legal width requirements established in CBOE Rule 8.7(b)(iv).[8] This means that market makers would not be permitted to give verbal quotes in accordance with the terms of the Pilot Program.

The effect of the proposal would be to restrict the number of instances in which market makers would be permitted to provide quotes that exceed the current legal widths.[9] The CBOE notes that in open outcry, when a floor broker requests a market, a market maker has the ability to evaluate all pricing information publicly available prior to responding with a quote. Moreover, the CBOE notes that a market maker typically responds with one quote at a time, which substantially lessens the likelihood of multiple executions across different series. According to the CBOE, the ability to evaluate pricing information prior to giving a verbal quote is not a luxury that a market maker enjoys on the electronic side, where the market maker could execute numerous transactions before having the ability to adjust his or her quotes. For this reason, the CBOE believes that the need to be able to quote $5 wide is lessened substantially in open outcry.

2. Statutory Basis

The CBOE believes that it is reasonable to limit the application of the Pilot Program to electronic quoting only. The CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the CBOE believes that the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–20 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–20 and should be submitted on or before May 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–9523 Filed 4–26–04; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Pilot Program Notice, *supra* note 4. The Pilot Program's relaxed quotation spread requirements apply after the opening trading rotation. During the opening trading rotation, market makers must quote in accordance with the traditional bid-ask width requirements. The $5 quotation requirements permitted under the Pilot Program become operative immediately following the opening rotation.

[7] *See* February 2004 Notice, *supra* note 5.

[8] Under CBOE Rule 8.7(b)(iv), the allowable bid-ask differentials are: $0.25 for options under $2, $0.40 for options between $2 and $5, $0.50 for options between $5 and $10, $0.80 for options between $10 and $20, and $1.00 for options above $20 (''current legal widths'').

[9] *See* note 8, *supra*.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2004, subject to the availability of funds. Five states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, 145 Duncan Drive, Suite 200, San Antonio, TX 78226, (210) 458–2450.

Mr. Conley Salyer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East, Charleston, WV 25301, (304) 558–2960.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711, (302) 831–2747.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, Ponce de Leon Avenue, #416, Edificio Union Plaza, Seventh Floor, Hato Rey, PR 00918, (787) 763–6811.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002, (713) 752–8425.

Ms. Becky Naugle, State Director, University of Kentucky, 225 Gatton College of Business Economics, Lexington, KY 40506–0034, (859) 257–7668.

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 860–5835.

Ms. Rene Sprow, State Director, Univ. of Maryland @ College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20742–1815, (301) 403–8300.

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973.

Ms. Diane Wolverton, State Director, University of Wyoming, P.O. Box 3922, Laramie, WY 82071, (307) 766–3505.

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (573) 882–0344.

Mr. Jon Ryan, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351.

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398.

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711.

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 188, Randolph Center, VT 05061–0188, (802) 728–9101.

Mr. Warren Bush, SBDC Director, University of the Virgin Islands, 8000 Nisky Center, Suite 720, St. Thomas, US VI 00802–5804, (340) 776–3206.

FOR FURTHER INFORMATION CONTACT: Jean Z. Smith, Acting Deputy Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: April 8, 2004.

Jean Z. Smith,

Acting Deputy Associate Administrator for Small Business Development Centers.

[FR Doc. 04–9564 Filed 4–26–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4662]

Renewal of Cultural Property Advisory Committee Charter

The Charter of the Cultural Property Advisory Committee is being renewed for a two-year period. The membership of this advisory committee consists of private sector experts in archaeology/anthropology/ethnology; experts in the international sale of cultural property; and, representatives of museums and of the general public. The committee was established by 19 U.S.C. 2601 *et seq.*, the Convention on Cultural Property Implementation Act. It reviews requests from other countries seeking U.S. import restrictions on archaeological or ethnological material the pillage of which places a country's cultural heritage in jeopardy. The committee makes findings and recommendations to the Secretary of State, who, on behalf of the President, determines whether to impose the import restrictions.

FOR FURTHER INFORMATION CONTACT: Cultural Property Office, U.S. Department of State, Bureau of Educational and Cultural Affairs, State Annex 44, 301 4h Street, SW., Washington, DC 20547. Telephone: (202) 619–6612; Fax: (202) 260–4893.

Dated: April 21, 2004.

Maria P. Kouroupas,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 04–9530 Filed 4–26–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 4660]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct a joint, open meeting at 1 p.m. on Thursday, May 20, 2004, at the Trade Winds Island Grand Beach Resort and Conference Center; 5600 Gulf Boulevard, St. Pete Beach, Florida. The meeting will be held in connection with the Radio Technical Commission for Maritime Services (RTCM) 2004 Annual Assembly Meeting. The purpose of the meeting is to review the outcome of the Eighth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue (COMSAR) that occurred on February 16–20, 2004, at IMO headquarters in London, England. Additionally, the meeting is to prepare for the 50th session of the IMO Subcommittee on Safety of Navigation (NAV), which is scheduled for July 5–9, 2004, at IMO Headquarters in London.

Items of principal interest on the COMSAR agenda are:

—Maritime Safety Information for GMDSS
—Development of a procedure for recognition of mobile satellite systems
—Emergency radiocommunications
—Large passenger ship safety
—Issues related to maritime security
—Developments in maritime radiocommunication systems and technology, including long-range tracking
—Matters concerning Search & Rescue
—Planning for the 9th session of COMSAR

Items of principal interest on the NAV agenda are:

—Routing of ships, ship reporting and related matters
—Requirements for the display and use of Automatic Identification System (AIS) information on shipborne navigational displays
—Review of the 2000 High Speed Craft
—(HSC) Code and amendments to the Dynamically Supported (DSC) Code and the 1994 HSC Code
—Anchoring, mooring and towing equipment
—Revision of the fishing vessel Safety Code and voluntary guidelines
—Recommendations on high-risk oceanic crossing by adventure craft
—Review of performance standards for radar equipment
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU–R Study Group 8 matters
—Large passenger ship safety: Effective voyage planning for large passenger ships
—Measures to enhance maritime security
—World-wide radionavigation system (WWRNS)
—Casualty analysis
—Guidance on early abandonment for bulk carriers

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil.* Information for the RTCM meeting can be found at *https://www.rtcm.org/index2.html.*

Dated: April 21, 2004.

Steven D. Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–9531 Filed 4–26–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4661]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday June 1, 2003, in Room 4420 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC, 20593–0001. The primary purpose of the meeting is to prepare for the 54th Session of the International Maritime Organization's (IMO) Technical Co-operation Committee from June 15th to 17th and to prepare for the 92nd Session of the IMO Council from June 21st to 25th, both to be held at IMO Headquarters in London, England.

The primary matters to be considered for the Technical Co-operation Committee include:

—Work of other bodies and organizations;
—Global programme on maritime security;
—Partnership arrangements for technical co-operation;
—Election of the Chairman and Vice-Chairman for 2005;
—Other matters.

The primary matters to be considered for Council include:

—Consideration of the reports of the Maritime Safety Committee, Legal Committee, Marine Environmental Protection Committee and Technical Co-operation Committee;
—Consideration of the strategy and policy of the Organization;
—Resource Management;
—Relations with intergovernmental and non-governmental organizations;
—International Maritime Prize;
—Other matters.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Ms. Eleanor Thompson, Commandant (G–CI), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 2114, Washington, DC 20593–0001 or by calling (202) 267–2246.

Dated: April 21, 2004.

Steven Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–9532 Filed 4–26–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Manassas Regional Airport, Manassas, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately three (3) acres of land at the Manassas Regional Airport, Manassas, Virginia to the City of Manassas/Virginia Department of Transportation for the assumption of maintenance on portions of Observation Road and Wakeman Drive. There are not impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan The road is being released to allow the City of Manassas to provide maintenance and improvements on the roads that have evolved to include general public use.

DATES: Comments must be received on or before May 27, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Juan E. Rivera, Airport Director, at the following address: Mr. Juan E. Rivera, Airport Director, P.O. Box 560, Manassas Regional Airport, Manassas, Virginia 20108.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on April 12, 2004.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 04–9517 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–03–C–00–ROC To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Greater Rochester International Airport, Rochester, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Greater Rochester International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 27, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Terrence G. Slaybaugh, Director of Aviation of Monroe County, New York at the following address: Greater Rochester International Airport, 1200 Brooks Avenue, Rochester, New York 14624.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Monroe County, New York under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530, (516) 227–3800. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Greater Rochester International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 19, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Monroe County, New York was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 15, 2004.

The following is a brief overview of the application:

Proposed charge effective date: August 1, 2004.

Proposed charge expiration date: August 1, 2013.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $40,310,360.

Brief description of proposed project(s):

1. Terminal Modifications for Baggage Screening;
2. ARFF Equipment;
3. SRE Equipment;
4. Taxiway A Construction;
5. Terminal Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe County, New York (Greater Rochester International Airport).

Issued in Garden City, New York on April 19, 2004.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 04–9516 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–08–C–00–RHI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander-Oneida County Airport, Rhinelander, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 27, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sherrie Baker, Assistant Director, Rhinelander-Oneida County Airport at the following address: 3375 Airport Road, Rhinelander, Wisconsin 54501.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Rhinelander-Oneida County, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Ave. South, Room 102, Minneapolis, MN 55450, (612) 713–4350. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 9, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Rhinelander-Oneida County, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 7, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50

Proposed charge effective date: January 1, 2005

Proposed charge expiration date: March 31, 2006

Total estimated PFC revenue: $200,936

Brief description of proposed projects: Acquire Snow Removal Equipment; Replace Airport Rescue and Firefighting Building Overhead Door; Painting/Marking Runway 9/27; Wildlife Fencing, Habitat Modification, and Bird Hazard Reduction Equipment; Environmental Assessment of Parallel Taxiway for Runway 15/33; Land Acquisition; Master Planning Updates; Replace Airport Beacon; Design Reconstruction of Runway 15/33; Reconstruction of Runway 15/33; Replace Runway End Identifier Lights on Runway 15; Design and Reconstruction/Construction General Aviation Apron and Taxiway; and PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander-Oneida County Airport.

Issued in Des Plaines, Illinois on April 19, 2004.

Barbara J. Jordan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 04–9518 Filed 4–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 27, 2004.

ADDRESSES: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 22, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety, Exemptions & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13542–N	RSPA–2004–17550.	Worthington Cylinders GmbH., A–3291, Kienberg-Gaming.	49 CFR 180.205; 173.301(h); 173.302(a)(1).	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for use in the transporting certain flammable and nonflammable gases. (Modes 1, 2, 3, 4)
13544–N	RSPA–2004–17548.	Blue Rhino Corporation, Winston-Salem, NC.	49 CFR 173.29	To authorize the transportation in commerce of cylinders containing a residue of propane to be transported as essentially unregulated.
13546–N	RSPA–2004–17547.	RUTGERS Organics Corporation, State College, PA.	49 CFR 171–180	To authorize the transportation in commerce of certain hazardous materials across a public road from the facility to be transported as essentially unregulated. (Mode 1)
13547–N	RSPA–2004–17546.	CP Industries, McKeesport, PA.	49 CFR 178.36(j); 178.36(1); 178.37(j); 178.37(1).	To authorize the use of an alternative testing procedure as an alternative to the flattening tests specified for DOT series cylinders. (Modes 1, 2, 3, 4)
13548–N	RSPA–2004–17545.	Continental Battery Company, Dallas, TX.	49 CFR 173.159	To authorize the transportation in commerce of batteries with two different UN numbers on the same transport vehicle. (Mode 1)
13549–N	RSPA–2004–17544.	West Isle Air Inc., Anacortes, WA.	49 CFR 172.101 Table; Col. (9B); 172.204(c)(3); 173.27(b)(3) and 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1,1.2,1.3 and 1.4 explosives which are forbidden or exceed quantities presently authorized for transportation. (Mode 4)
13551–N	RSPA–2004–17542.	INO Therapeutics, LLC, Port Allen, LA.	49 CFR 173.301(1)	To authorize the transportation in commerce of non-DOT specification cylinders that are designed to a foreign specification for use in transporting various hazardous materials. (Modes 1, 3)
13553–N		Aerojet, Redmond, WA	49 CFR 173.51; 173.56; 173.56(b)(1); 173.57; 176.58.	To authorize the manufacture, mark, sale and use of a specially designed device used as part of a fire suppression system. (Mode 1)
13554–N		The Fertilizer Institute, Washington, DC.	49 CFR 173.315(m)	To authorize the transportation in commerce of anhydrous ammonia in cargo tanks (nurse tanks) without certain specification markings operated by private carrier exclusively for agricultural purposes. (Mode 1)

[FR Doc. 04–9556 Filed 4–26–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–868X; 869X]

Mississippi Tennessee Holdings, LLC—Abandonment Exemption—in Union, Pontotoc and Chickasaw Counties, MS and Discontinuance of Service Exemption—in Union, Pontotoc and Chickasaw Counties, MS

On April 7, 2004, Mississippi Tennessee Holdings, LLC (MTH) and Mississippi Tennessee Railroad LLC (MTR) jointly filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. MTH seeks to abandon and MTR seeks to discontinue service over a line of railroad extending from milepost 324.2 near New Albany and the end of the line at milepost 281.0 near Houston, MS, a distance of 43.2 miles in Union, Pontotoc and Chickasaw Counties, MS. The line traverses United States Postal Service Zip Codes 38863, 38850 and 38851 and includes stations located at Pontotoc, Houlka and Houston, MS.

The line does not contain federally granted rights-of-way. Any documentation in possession of MTH or MTR will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 26, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 17, 2004. Each trail use request must be accompanied by a filing fee, which will be $200 as of April 28, 2004. *See* 49 CFR 1002.2(f)(27), as amended in *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2002 New Fees,* STB Ex Parte No. 542 (Sub-No. 4) (STB served and published Mar. 29, 2004) (69 FR 16173).

All filings in response to this notice must refer to STB Docket Nos. AB–868X and AB–869X and must be sent to (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112. Replies to the petition are due on or before May 17, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public

Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: April 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9255 Filed 4–26–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 248X)]

Norfolk Southern Railway Company-Abandonment Exemption-in Washington County, NC

On April 7, 2004, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–10905[1] to abandon a 7.3-mile line of railroad between milepost NS–82.7 at Mackeys, and milepost NS–90.0 at Plymouth, in Washington County, NC. The line segment traverses United States Postal Service Zip Code 27962, and includes the stations of Mackeys and Plymouth.

The line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 26, 2004.

Unless the request for an exemption from the provisions of section 10904 is granted, any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 17, 2004. Each trail use request must be accompanied by a filing fee which will be $200 as of April 28, 2004. *See* 49 CFR 1002.2(f)(27), as amended in *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2002 New Fees,* STB Ex Parte No. 542 (Sub-No. 4) (STB served and published Mar. 29, 2004).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 248X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191. Replies to the NSR petition are due on or before May 17, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9254 Filed 4–26–04; 8:45 am]

BILLING CODE 4915–01–P

[1] In addition to an exemption from 49 U.S.C. 10903, NSR seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). NSR states that it has conveyed the right-of-way, subject to a temporary easement for the railroad line, to Dominion Virginia Power for the purpose of accessing, upgrading, and maintaining its electric power transmission facilities. NSR's request for exemption from sections 10904 and 10905 will be addressed in the final decision.

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Authorization Agreement for Preauthorized Payment (SF 5510)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form 5510, ''Authorization Agreement for Preauthorized Payment''.

DATES: Written comments should be received on or before June 28, 2004.

ADDRESSES: Direct all written comments to financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Craig Sadick, Room 404A, 401–14th Street, SW., Washington, DC 20227 (202) 874–6754.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Authorization Agreement for Preauthorized Payment.

OMB Number: 1510–0059.

Form Number: SF 5510.

Abstract: This form is used to collect information from remitters (individuals and corporations) to authorize electronic fund transfers from accounts maintained at financial institutions to collect monies for government agencies.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit, individuals or households, Federal Government.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 25,000.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 23, 2004.

Gary Grippo,

Assistant Commissioner, Federal Finance.

[FR Doc. 04–9484 Filed 4–26–04; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 69, No. 81

Tuesday, April 27, 2004

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 DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

Correction

In notice document 04–8649 beginning on page 20864 in the issue of Monday, April 19, 2004, make the following correction:

On page 20865, in the first column, after the signature block, in the next line, the heading ''**F044 AS SG U**'', should read ''**F044 AF SG U**''.

[FR Doc. C4–8649 Filed 4–26–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 27, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 122203A]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. This rule implements the following measures: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England (SNE) scallop dredge vessels; modifications to Vessel Monitoring System (VMS) requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank (GB); a Special Access Program (SAP) to allow increased targeting of GB yellowtail flounder; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: Effective May 1, 2004, except for § 648.80(c)(2)(v)(A)(*3*) and (B)(*3*), which are effective August 1, 2004.

ADDRESSES: Copies of Amendment 13, its Regulatory Impact Review (RIR), and the Final Supplemental Environmental Impact Statement (FSEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950. NMFS prepared a Final Regulatory Flexibility Act Analysis (FRFA), which is contained in the Classification section of this rule. The FSEIS/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*. Copies of the Record of Decision (ROD) and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Street, Gloucester, MA 01930–2298.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Patricia A. Kurkul at the above address and by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281–9347, fax: (978) 281–9135; e-mail: *thomas.warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements measures contained in Amendment 13 to the FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 18, 2004. A proposed rule for this action was published on January 29, 2004 (69 FR 4362), with public comments accepted through February 27, 2004. The details of the development of Amendment 13 were contained in the preamble of the proposed rule and are not repeated here. In the proposed rule, NMFS requested public comment on all proposed measures, but specifically asked for comment on several proposed measures for which NMFS had concern. After reviewing further Amendment 13, its supporting analysis and public comments received on the amendment and the proposed rule, NMFS, on behalf of the Secretary, has disapproved seven measures contained in Amendment 13, as submitted, based on its determination that they are inconsistent with one or more of the national standards of the Magnuson-Stevens Act or other applicable law. The disapproved measures are: The abbreviated process to implement SAPs; the Closed Area (CA) II Haddock SAP; the CA I Hook Gear SAP; the prohibition on surfclam and ocean quahog dredge gear in portions of the Nantucket Lightship Closed Area (NLCA); the exemption to allow shrimp trawl gear in the Western Gulf of Maine (WGOM) Closed Area; the GB Hook Gear Cod Trip Limit Program; and removal of the Flexible Area Action System. Further explanation of the reasons for disapproval of those measures is contained in this rule.

Disapproved Measures

Abbreviated Process To Implement SAPs

An abbreviated process to implement future SAPs was proposed in Amendment 13, whereby the Administrator, Northeast Region, NMFS, (RegionalAdministrator) would be given the authority, upon submission and review of a proposed SAP by a member of the public, to implement the SAP, provided certain conditions are met. However, the proposed abbreviated process to implement SAPs applies only to proposed SAPs that fall within the range of impacts analyzed in Amendment 13 or ''other'' management actions; therefore, it is unlikely that additional proposed SAPs will meet this criterion. Furthermore, the proposed time frame for Regional Administrator approval of additional SAPs under the abbreviated process is inadequate. It is un-likely that the proposed SAP approval process would achieve the goal of expedited approval of SAPs due to the complexity of pertinent issues and analytical burdens associated with SAP development. Because this requirement would create an administrative burden, with little resulting benefit, it is not consistent with the efficiency requirements of E.O. 12866 and

National Standard 7. Therefore, NMFS has disapproved the proposed abbreviated SAP approval process in Amendment 13. As a result, the proposed procedures are not included in this final rule and proposed SAPs must be implemented through the existing FMP framework adjustment process.

SAPs

Four SAPs were proposed in Amendment 13; however, for two of these SAPs, the CA II Haddock SAP and the CA I Hook Gear Haddock SAP, there is insufficient analysis to determine the impacts of these programs. In addition, for the CA II Haddock SAP, the Amendment 13 analysis indicates a relatively high and consistent rate of cod bycatch in the area adjacent to CA II. Although vessels in the proposed CA II haddock access program would have been required to use a haddock separator trawl (in order to reduce bycatch of cod), this SAP could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons, the proposed SAP is inconsistent with National Standard 1 and National Standard 2.

With regard to the CA I Hook Gear Haddock SAP, there is an experimental fishery currently occurring to determine the impacts of a directed hook-gear fishery for haddock in CA I. However, that experiment has not yet been completed and Amendment 13 does not include information on whether a directed fishery on haddock in CA I would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved. Should additional information be forthcoming that would justify the creation of these SAPs, such as the results from the current hook gear experimental fishery in CA I, these programs could be reconsidered for approval in a future action.

Prohibition on Surfclam and Ocean Quahog Dredge Gear in Groundfish Closed Areas

This final rule implements seven habitat areas that are closed to all bottom-tending mobile gear (a level 3 habitat closure), including surfclam/ocean quahog dredge gear. Several of these EFH Closure Areas are within portions of the currently closed groundfish areas, *e.g.*, the Nantucket Lightship Habitat Closure Area lies within a large portion of the groundfish NLCA and extends northward of this area; the Cashes Ledge Habitat Closure Area lies within the eastern portion of the Cashes Ledge Closure Area; and the WGOM Habitat Closure Area almost fully encompasses the WGOM Closure Area. In addition to excluding surfclam/ocean quahog dredge gear from the EFH Closure Areas, Amendment 13 also proposed to exclude this gear from those portions of the NLCA, the Cashes Ledge Closure Area, and the WGOM Closure Area that lie outside of the EFH Closure Areas, to further protect EFH for groundfish. Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closed areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, and there is no evidence that the exclusion of this gear is necessary to protect groundfish EFH, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

Exemption To Allow Shrimp Trawl Gear in the WGOM Closure Area

Amendment 13 proposed to exempt shrimp trawl gear from the WGOM Habitat Closure Area's prohibition on bottom-tending mobile gear. This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

GB Hook Gear Cod Trip Limit Program

The GB Hook Gear Cod Trip Limit Program, a voluntary trip limit program, was proposed in Amendment 13 for vessels fishing with hook gear on GB. This program proposed that participants make an annual declaration into this program and fish under the following seasonal trip limits and restrictions for GB cod: (1) July 1–September 15; 2,000 lb (907 kg)/DAS and no landings Friday and Saturday; (2) September 16–December 31; 600 lb (272 kg)/DAS; (3) January–March; 2,000 lb (970 kg)/DAS; and (4) April–June; no jig or demersal longline groundfish fishing on GB. In the absence of this program, Amendment 13 implements one uniform possession limit for GB cod: 1,000 lb (453 kg)/DAS; 10,000 lb (4533 kg)/trip.

The program is being disapproved principally because the potential benefits of the program are unknown. The FSEIS does not include a rationale or justification for this program, and the program is not included in the analysis of the impacts on bycatch. Furthermore, the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), the industry organization that created this program, submitted a comment requesting disapproval. The CCCHFA stated that the program would add uncertainty to the FMP because the impacts of the program are not adequately quantified, that the program is incomplete and was not meant to be implemented without a hard TAC, and that the program will be difficult to enforce. Because there is no justification provided for the GB Hook Gear Cod Trip Limit Program, this program does not comply with applicable law and NMFS is disapproving this measure.

Removal of Flexible Area Action System

Amendment 13 proposes removal of the Flexible Area Action System (FAAS) in order to streamline the regulations. The FAAS process was originally implemented in amendment 5 (40 FR 9872, March 1, 1994) and was intended to enable the Regional Administrator and the Council to take timely action in order to alleviate discard concerns. The FAAS is not perceived by the Council to be useful because past Council attempts to use the process have not been successful due to the length of time taken to implement actions. However, one commenter requested that NMFS disapprove the proposed removal of the FAAS from the regulations because it provides the Council and NMFS with the ability to respond to seasonal and area bycatch problems in the groundfish fishery in a quicker fashion than through normal rulemaking procedures. The commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected. NMFS agrees with the commenter that the FAAS should be retained because of its potential to address discard or bycatch issues in less time than would be required by a framework adjustment. In

light of the fact that Amendment 13 implements several novel management systems, including the use of B DAS, it is possible that unforeseen discarding or bycatch problems may occur. Therefore, NMFS is disapproving the removal of the FAAS because retention of the FAAS in the FMP increases the likelihood that the Council and the Regional Administrator can respond to discard and bycatch problems in a timely manner, and reinforces the ability of the FMP to comply with National Standard 1 and National Standard 9.

Approved Measures

NMFS has approved the remainder of the measures proposed in Amendment 13. In order to provide the public with the clearest information possible on the numerous changes to the groundfish regulations that result from the implementation of Amendment 13, NMFS is publishing in this final rule the entirety of the regulations in 50 CFR part 648, subpart F, that pertain to the groundfish fishery (both the existing and new regulations). A description of the new management measures resulting from Amendment 13 follows.

1. Recreational Measures

The bag limit (possession limit) for cod aboard a private recreational vessel (*i.e.*, not a charter/party vessel) fishing while in the Exclusive Economic Zone (EEZ), or caught in the EEZ, is changed to 10 cod per person per day, with no possession limit for haddock, year-round.

The possession limit for cod aboard a charter/party vessel fishing in the Gulf of Maine (GOM) is changed to 10 cod per person per day, year-round.

For charter/party vessels issued a Federal multispecies permit, and for private recreational vessels, any trip in excess of 15 hours and covering 2 calendar days will be considered a 2-day trip for purposes of calculating allowable bag limits. Allowable bag limits for recreational vessels conducting trips longer than 2 consecutive calendar days will be determined by adding 24 hours for each additional day to the 15-hour minimum, 2-day trip requirement.

The minimum size for cod allowed to be possessed by persons fishing aboard private recreational and charter/party vessels subject to these regulations is reduced from 23 inches (58.4 cm) total length (TL) to 22 inches (55.9 cm) TL. The minimum size for haddock is reduced from 22 inches (55.9 cm) to 19 inches (48.2 cm) TL.

2. Handgear Permit

A new limited access permit category, called Handgear A, is created for qualified vessels fishing with handgear (rod and reel, handline, or tub-trawl gear). To qualify for a Handgear A permit, a vessel must have been previously issued a NE multispecies open access Handgear permit, and must have landed at least a total of 500 lb (227 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit category, in at least one of the fishing years from 1997 through 2002 (fishing years are May 1 through April 30).

Vessels fishing under the limited access Handgear A permit are allowed to land up to 300 lb (136 kg) of cod, one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Handgear A permits are transferrable between vessels, with the transfers not subject to vessel size and horsepower upgrade restrictions. In addition to handline and rod-and-reel gear, open access Handgear and limited access Handgear A permit holders are allowed to fish hand-hauled tub-trawl gear, with a maximum of 250 hooks.

Vessels fishing in the open access Handgear permit category may possess up to 75 lb (34.0 kg) of cod and one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. The cod trip limit for both the limited access Handgear A permit and the open access Handgear permit will be adjusted proportional (rounded up to the nearest 50 lb (22.7 kg) and 25 lb (11.4 kg), respectively) to changes in the GOM cod trip limits for groundfish DAS vessels in the future, as necessary.

3. Northern Shrimp Exempted Fishery

The geographic restriction of the northern shrimp fishery is eliminated; all other restrictions for participation in the northern shrimp fishery remain in effect.

4. Tuna Purse Seine Access to Groundfish Closed Areas

Tuna purse seine vessels may fish in all groundfish closed areas, including CA I, CA II, and the NLCA, subject to existing restrictions for using exempted gear in those areas. Fishing under this exemption is not allowed in the CA II Habitat Area of Particular Concern (HAPC).

5. SNE Scallop Dredge Exemption Program

Unless otherwise prohibited in § 648.81, or unless prohibited under the scallop regulations, vessels with a limited access scallop permit that have declared out of the scallop DAS program as specified in § 648.10, or that have used up their scallop DAS allocations, unless otherwise restricted, and vessels issued a General Category scallop permit, are allowed to fish in statistical areas 537, 538, 539, and 613, defined as the SNE Scallop Dredge Exemption Area, when not fishing under a groundfish DAS, with certain restrictions. A vessel meeting the above requirements and fishing in the SNE Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish (as defined in the Magnuson-Stevens Act) other than Atlantic sea scallops.

6. Modified VMS Operational Requirements

A vessel using a VMS may opt out of the VMS program for a minimum period of 1 calendar month by notifying the Regional Administrator.

7. Standards for Certification of Exempted Fisheries

The following changes apply to the standards for certification of exempted fisheries:

The incidental catch standard (5 percent of the total catch, by weight) may be modified by the Council or Regional Administrator, for those groundfish stocks that are not in an overfished condition, or if overfishing is not occurring, provided that the modification would not cause a delay in a rebuilding program, would not result in overfishing of a stock, and would not result in a stock becoming overfished. Additional factors may also be considered. The incidental catch standard may be modified either through a Council action (framework adjustment) that would change the standard for all exempted fisheries, or on a case-by-case basis for specific exempted fisheries.

On a case-by-case basis, through approval by the Regional Administrator, with notification to the public through rulemaking consistent with the Administrative Procedure Act (APA), or through Council development of a framework action for NMFS's consideration, an exempted fishery in the GOM, GB, or SNE exemption areas, and a small mesh fishery in that portion of the Mid-Atlantic (MA) Regulated Mesh Area (RMA) outside of the SNE exemption area, may be authorized to possess and land certain regulated groundfish. Possession by an exempted fishery of fish from a groundfish stock under a rebuilding program may be allowed, but only if it can be determined that the catch of that stock

by the exempted fishery would not likely result in exceeding the rebuilding fishing mortality rate for that stock.

8. Periodic Adjustments to the FMP

The process to make adjustments to the FMP (§ 648.90) is changed from an annual to a biennial process. Although implementation of this change decreases the frequency of the requirement that the Plan Development Team (PDT) must perform a review of each of the regulated multispecies, Atlantic halibut, and ocean pout, and submit management recommendations to the Council, the Council may still initiate a Framework Adjustment to address management concerns at any time. The first PDT review will be in 2005, to determine necessary changes for the 2006 fishing year. For the 2005 review, an updated groundfish assessment, peer reviewed by independent scientists, will be conducted. In addition to the biennial review discussed above, the PDT will meet to conduct a review of the groundfish fishery by September 2008 to determine the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in Amendment 13 will be examined during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the Amendment 13 biomass targets are still considered valid, given the response of the stocks to the management measures in Amendment 13 that were expected to result in certain stock levels by 2008.

The Multispecies Monitoring Committee is folded into the PDT, and will cease to exist as a separate committee.

9. Rebuilding Program

Programs to rebuild all overfished groundfish stocks, primarily through effort-reduction measures that are phased in over a period of several years, are established through Amendment 13. Because several stocks are currently not overfished, others are being overfished (*i.e.*, the fishing mortality rates on these stocks are too high), and some are in need of rebuilding to the levels that can produce maximum sustainable yield (MSY) on a continuing basis, a mixture of management measures is adopted to achieve all of the objectives. The measures to accomplish this are summarized as follows:

DAS Allocations. DAS, which form the effort currency in the groundfish fishery, are reallocated, beginning in fishing year 2004. The allocation of DAS is based on historic participation in the groundfish DAS fishery. The number of DAS allocated to the fishery as a whole is based on the number that was determined to be appropriate and necessary to rebuild overfished stocks and end overfishing. The Amendment 13 DAS allocation is based on an expected DAS use rate, and takes into account additional DAS use that may result from implementation of a DAS Leasing Program. The DAS Leasing Program is described in more detail later in this preamble.

The allocation of a vessel's DAS is calculated from that vessel's DAS baseline, defined as the maximum DAS used by that vessel in any single fishing year from qualifying fishing years 1996 through 2001 (May 1, 1996, through April 30, 2002). Qualifying years are only those in which the vessel landed a total of 5,000 lb (2,268 kg) or more of regulated groundfish species. Landings must be documented through dealer reports submitted to NMFS prior to April 30, 2003. For fishing years 2004 and 2005, 60 percent of a vessel's DAS baseline are defined as its ''Category A'' DAS, and 40 percent of a vessel's DAS baseline are defined as its ''Category B'' DAS. Category B DAS are further categorized as ''regular B'' DAS and ''reserve B'' DAS, each representing 20 percent of the vessel's DAS baseline. The difference between a vessel's fishing year 2001 DAS allocation and its DAS baseline (the sum of Category A and Category B DAS) is the vessel's ''Category C'' DAS. Upon implementation of Amendment 13, either regular or reserve B DAS may be used in an approved SAP, but neither may be used outside of an approved SAP. The procedures and restrictions applying to the use of regular B DAS when fishing outside of a SAP are currently being developed by the Council in Framework Adjustment 40. Category C DAS may not be used at this time.

Because groundfish DAS vessels are allocated DAS based on their historical fishing records, the Fleet DAS permit category and the Large Mesh Fleet DAS permit category are eliminated, since these categories represented a fleet average of DAS. Vessels that fished in either the Fleet DAS or Large Mesh Fleet DAS permit categories will automatically be reissued permits in the Individual DAS and Large Mesh Individual DAS permit categories, respectively. Vessels affected by this change will have an opportunity to reapply for a different permit category.

DAS Use. Beginning May 1, 2004, Category A DAS may be used to target any regulated groundfish stock. Category B DAS (*i.e.*, regular or reserve B DAS) may be utilized to fish in approved SAPs, subject to the requirements of the SAPs.

A vessel is required to declare its intent to use a Category B DAS at the start of a fishing trip, and must specify which type of (regular or reserve) B DAS will be used on that trip. Even though regular B DAS may initially be used only while fishing within a SAP, NMFS must track the usage of both types of B DAS by each vessel. This will enable NMFS and the vessels to know how many of each type of B DAS each vessel has remaining for the fishing year, should Framework Adjustment 40 implement methods for use of regular B DAS during the fishing year.

Vessel owners should be aware that, if Framework Adjustment 40 develops a program for use of regular B DAS outside of SAPs that includes a ''flipping'' provision, and that program is implemented in the middle of a fishing year, a vessel would need to have Category A DAS available in order to fish the regular B DAS outside of a SAP during the remainder of that fishing year.

As groundfish stocks rebuild, there may be opportunities to increase the number of available Category A DAS. In that circumstance, all Category B DAS (regular and reserve) would be converted to Category A DAS before any Category C DAS would be converted to Category A DAS. If necessary to achieve rebuilding targets, Category A DAS could be changed to Category B DAS by the Council. Any DAS carried over from the 2003 fishing year into the 2004 fishing year will be classified as regular B DAS. For any DAS carried over from the 2004 fishing year into the 2005 fishing year, and for all subsequent fishing years, the carried-over DAS will be determined as follows: If a vessel has Category A DAS remaining, these will be carried over first; if the vessel has fewer than 10 A DAS remaining, then the vessel's regular B DAS will be carried over, up to a total of 10 DAS; if the vessel has fewer than 10 A DAS and regular B DAS, combined, remaining, then the vessel's reserve B DAS will be carried over, up to a total of 10 DAS, combined. For example, if a vessel ended a fishing year with 3 A DAS, 6 regular B DAS, and 10 reserve B DAS, that vessel's carry-over DAS would be 10 DAS, comprised of the following: 3 A DAS, 6 regular B DAS, and 1 reserve B DAS. Category C DAS cannot be

carried over and cannot be fished at this time.

Default Measures. Amendment 13 establishes fishing mortality rate targets to end overfishing and rebuild all of the managed groundfish stocks. Some of the fishing mortality rates are immediately reduced to a level that ends overfishing. For several other stocks, reductions in fishing mortality rates will be phased in, in order to mitigate impacts of the reductions. To ensure that the scheduled fishing mortality reductions under Amendment 13 are realized by fishing year 2006, specifically for American plaice and SNE/MA yellowtail flounder, which may require an additional reduction in the fishing mortality rate to completely end overfishing, the following default measures will automatically become effective on May 1, 2006: An additional 5-percent reduction in DAS, which will allow a vessel to fish up to 55 percent of its DAS baseline allocation as A DAS, and 45 percent as B DAS; and differential DAS counting for vessels fishing in the SNE/MA RMA, where DAS will be counted at a rate of 1.5 to 1. On May 1, 2009, there will be an additional DAS reduction of 10 percent, which will allow a vessel to fish up to 45 percent of its DAS baseline allocation as A DAS, and 55 percent as B DAS, to ensure rebuilding for GB cod, GOM cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, white hake, and SNE/MA winter flounder. A stock assessment update is scheduled to occur in 2005, and a benchmark assessment will be conducted in 2008 to determine whether the default measures are necessary, or whether existing measures have proven sufficient to achieve the necessary reductions in fishing mortality. The default measures will not occur if the Regional Administrator determines: (1) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or (2) that biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy). If one of the two conditions is met and all other stocks meet the fishing mortality rates specified in Amendment 13, the Regional Administrator will publish that determination in the **Federal Register**, consistent with the requirements of the APA. The criteria for avoiding default measures have been modified from the proposed rule to better reflect the intent of Amendment 13, based on comments received from the Council.

Trip Limits. The following modifications to the cod and yellowtail flounder trip limits are implemented:

GOM cod: The possession limit is increased to 800 lb (363 kg)/DAS, with a limit of 4,000 lb (1,814 kg)/trip.

GB cod: The possession limit is reduced to 1,000 lb (454 kg)/DAS, with a limit of 10,000 lb (4,536 kg)/trip, unless the vessel has declared into the Eastern U.S./Canada Area.

CC/GOM yellowtail flounder, when fishing in the CC/GOM Yellowtail Flounder Area:

April 1 through May 31, and October 1 through November 30: 250 lb (113 kg)/trip; and

June 1 through September 30, and December 1–March 31: 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

SNE/MA yellowtail flounder, when fishing in the SNE/MA yellowtail flounder area (the SNE/MA stock area):

March 1 through June 30: 250 lb (113 kg)/trip; and

July 1 through February 28 (or 29): 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

Modifications to Gear Restrictions. Gear restrictions are modified as follows:

For Day gillnet vessels fishing in the GOM RMA: The minimum mesh size for flatfish nets is reduced from 7-inch (17.8-cm) mesh to 6.5-inch (16.5-cm) mesh.

For Trip gillnet vessels fishing in the GB RMA: The number of gillnets that may be used is increased from 50 to 150.

For Day gillnet vessels fishing in the MA RMA: The number of roundfish gillnets that can be used is reduced from 80 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch mesh (16.5-cm) (square or diamond); and

The number of flatfish gillnets that can be used is reduced from 160 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch (16.5-cm) mesh (square or diamond).

A summary of the revised gear requirements appears in Table 1.

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
Minimum Mesh Size Restrictions for Gillnet Gear				
NE Multispecies Day Gillnet Category*	Roundfish nets: 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net Flatfish nets: 6.5″ (16.5 cm) mesh; 100-net allowance; 1 tag/net	All nets: 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets: 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets: 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net. Flatfish nets: 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.
NE Multispecies Trip Gillnet Category*	All nets 6.5″ (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5″ (16.5 cm) mesh; 150-net allowance; 2 tags/net	All nets 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.
Monkfish Vessels**	10″ (25.4 cm) mesh/150-net allowance.			

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS—Continued

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
	1 tag/net.			
Minimum Mesh Size Restrictions for Trawl Gear				
Codend only mesh size*	6.5″ (16.5 cm) diamond or square		7.0″ (17.8 cm) diamond or 6.5″ (16.5 cm) square	6.5″ (16.5 cm) diamond or square.
Large Mesh Category—entire net	8.5″ (21.59 cm) diamond or square			7.5″ (19.0 cm) diamond or 8.0″ (20.3 cm) square.
Maximum Number of Hooks and Size Restrictions for Hook Gear* **				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook gear vessels only).
	No less than 6″ (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A.

* When fishing under a NE multispecies DAS
** Monkfish Category C and D vessels, when fishing under a monkfish DAS
*** When fishing under a NE multispecies DAS or when fishing under the Small Vessel permit

10. DAS Transfer Program

Limited access NE multispecies permit holders may transfer DAS permanently to other limited access permit holders, subject to the following restrictions and conditions:

The length overall (LOA) and gross tonnage baseline of the buyer/transferee vessel may not be more than 10 percent greater, and its horsepower may not be more than 20 percent greater than the baseline of the seller/transferor vessel. The seller/transferor vessel must retire from all state and Federal commercial fisheries and relinquish permanently all Federal and state fishing permits. Category A and B DAS that are transferred are reduced by 40 percent; Category C DAS that are transferred are reduced by 90 percent. Vessel permits under Confirmation of Permit History (CPH) may be transferred, but vessels fishing under a sector allocation are prohibited from transferring DAS during the fishing year in which the vessel is participating in the sector.

11. DAS Leasing Program

This final rule implements a program to allow limited access NE multispecies permit holders to lease groundfish DAS to one another in fishing years 2004 and 2005, under the conditions and restrictions described below. For purposes of this program, the term ''lease'' refers to the transfer of the use of DAS from one limited access groundfish vessel to another, for no more than 1 fishing year.

Eligibility. All vessels with a valid limited access groundfish DAS permit are eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing are termed lessees; eligible vessels leasing-out DAS are termed lessors. DAS associated with a CPH may not be leased. Vessels issued a Small Vessel or Handgear A permit, *i.e.*, vessels that do not require the use of groundfish DAS, are not allowed to lease DAS, and vessels participating in an approved sector under the Sector Allocation Program are not allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector.

Application Procedures. An eligible vessel wanting to lease groundfish DAS must submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Vessels with a VMS will likely be able to receive notification of an approved lease agreement sooner than 45 days. Upon approval of the application by NMFS, the lessor and lessee will be sent written confirmation of the approved application. Leased DAS will be effective only during the fishing year for which they are leased. A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions are complied with.

An application to lease DAS for a given fishing year may be submitted at any time prior to the fishing year in question, or anytime throughout the fishing year in question, up until March 1. Should an application be denied, the Regional Administrator will send a letter to the applicant describing the reason(s) for the application's rejection. The decision by the Regional Administrator is the final agency decision. There is no appeal process.

Conditions and restrictions. No subleasing of groundfish DAS is allowed. This means that, once a lease application is approved by NMFS, the leased DAS may not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (*e.g.*, a vessel sinking). Vessels are not allowed to lease carry-over DAS. Only Category A DAS may be leased, and all leased DAS must be Category A DAS.

Vessels are allowed to lease as few as 1 DAS to any one vessel. The maximum number of DAS that can be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee may fish that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a person wants to lease DAS for a vessel with a limited access groundfish permit, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it may lease is 88. If the same vessel has 53 Category A DAS allocated to it in fishing year 2004, that vessel may hold and fish up to 141 Category A DAS for 2004 (the 53 A DAS allocated for fishing year 2004 plus the 88 DAS allocated to that vessel in fishing year 2001).

A lessor may not lease DAS to any vessel with a baseline horsepower rating that is 20 percent or more greater than that of the horsepower baseline of the lessee vessel. A lessor also may not lease DAS to any vessel with a baseline LOA that is 10 percent or more greater than that of the baseline of the lessee vessel's LOA.

History of DAS Use and Landings. Because, in the future, DAS use and

landing history may be used to determine fishing rights, history of leased DAS use will be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS will be presumed to be attributed to the lessee vessel. However, the history of used leased DAS will be presumed to remain with the lessor only if the lessee actually fishes the leased DAS in accordance with the DAS notification program. For purposes of DAS-use history, leased DAS will be considered to be the first DAS to be used, followed by the allocated DAS. For example, if a vessel has an allocation of 50 DAS, leased an additional 20 DAS, and actually fished a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 20 DAS, for purposes of its DAS-use history, because the lessee vessel will be presumed to have used its 20 leased DAS first. This same vessel will be presumed to have only fished 40 of its 50 allocated DAS for the purposes of its DAS-use history. History of fish landings will be presumed to be attributed to the vessel that actually landed the fish (lessee).

In the case of multiple lessors, the leased DAS actually used will be attributed to the lessors based on the order in which such leases are approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 30 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 30 DAS used by lessee Vessel A during that fishing year would be attributed to lessor Vessel B, the next 20 DAS would be attributed to lessor Vessel C, and the next 50 DAS would be attributed to lessee Vessel A, for purposes of DAS-use history.

Monkfish Category C and D vessels. It is possible that a vessel with both a limited access groundfish permit and a limited access monkfish permit (monkfish Category C or D vessels), because of the groundfish DAS reductions under Amendment 13, could have more allocated monkfish DAS than groundfish A DAS. Such vessels are allowed to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Monkfish Category C and D vessels that have remaining monkfish-only DAS, and that have submitted a groundfish DAS Leasing Application that has been approved by NMFS, will be required to fish their available ''monkfish-only'' DAS in conjunction with their leased groundfish A DAS, to the extent that the vessel has groundfish A DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

If a monkfish Category C or D vessel leases groundfish A DAS to another vessel, the vessel is required to forfeit a monkfish DAS for each groundfish A DAS that the vessel leases, equal in number to the difference between the number of remaining groundfish A DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 40 unused monkfish DAS and 47 allocated groundfish A DAS leased 10 of its groundfish A DAS, the lessor would forfeit the use of 3 of its monkfish DAS (40 monkfish DAS—37 groundfish A DAS = 3 DAS) because it would have 3 fewer groundfish A DAS than monkfish DAS after the lease.

12. U.S./Canada Resource Sharing Understanding

This rule implements the U.S./Canada Resource Sharing Understanding (Understanding) approved in Amendment 13. Certain changes from the proposed rule have been made in this final rule to be consistent with Amendment 13. Under the Understanding, management of GB cod, GB haddock, and GB yellowtail flounder is subject to the terms of the Understanding within two specified areas on GB referred to as the U.S./Canada Management Areas (composed of the Western U.S./Canada Area and the Eastern U.S./Canada Area). The Eastern U.S./Canada Area is composed of statistical areas 561 and 562, and is the U.S./Canada management area for GB cod and GB haddock (cod/haddock management area). The Western U.S./Canada Area is composed of statistical areas 522 and 525. The U.S./Canada management area for GB yellowtail flounder is composed of both the Eastern and Western U.S./Canada Areas.

The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. Annual harvest levels and recommended management measures for the U.S./Canada Management Areas will be determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Steering Committee. The U.S. TACs in fishing year 2004 will be as follows: 300 mt (metric tons) for GB cod; 5,100 mt for GB haddock; and 6,000 mt for GB yellowtail flounder. These TACs were recommended by the TMGC and adopted by the Council at its January 2004 meeting. Once any one of these TACs is reached, all vessels will be prohibited from harvesting, possessing, or landing the species for which the TAC has been reached. In addition, the Eastern U.S./Canada Area will be closed to all fishing by groundfish DAS vessels, with the exception of an approved SAP, provided that TAC for the target species is still available. The Western U.S./Canada Area will not be closed, but will have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

Amendment 13 is intended to constrain catches of the three shared stocks by U.S. vessels to ensure that they will not exceed the U.S. allocations. The management measures to implement the Understanding are as follows: All NE multispecies DAS vessels fishing on a groundfish DAS in the U.S./Canada Management Areas are required to utilize a fully functional VMS. Vessels are required to declare, through their VMS, prior to departure on a trip, the portion of the U.S./Canada Management Area they intend to fish in. For the purposes of selecting vessels for observer deployment, a vessel fishing in the U.S./Canada Management Area must provide notice to NMFS at least 5 working days prior to the beginning of any trip on which it declares into the U.S./Canada Management Area. This notification will ensure that the desired level of observer coverage can be achieved. Once declared into a specific area, a vessel may not fish outside of that area for the remainder of that fishing trip. Vessels making a trip in the U.S./Canada Management Area are required to report their GB cod, GB haddock, and GB yellowtail flounder catches (including discards) through their VMS on a daily basis. Because these are ''hard'' TACs, and any overages in a given year must be paid back in a lower TAC for that stock in the next fishing year, it is essential that catches be reported in a timely manner. Groundfish vessels not under DAS are not subject to the VMS requirement. To ensure enforceability of the Understanding, all groundfish vessels fishing with a VMS will be polled at least twice per hour when fishing in one of the U.S./Canada Management Areas.

As an incentive to fish on the shared stocks in the Eastern U.S./Canada Area, DAS will not be counted until the vessel crosses the boundary line into that Area. To reduce bycatch of cod and other species, all groundfish trawl vessels fishing in the Eastern U.S./Canada Area, but not the Western U.S./Canada Area as specified in the proposed rule, are also required to fish with, and have on board only, either a flatfish net and/or

a haddock separator trawl, which are defined in this final rule. After further review of Amendment 13 and the comments submitted by the Council, the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal. The definitions of the separator trawl and flatfish nets have been revised based on public comment.

This rule implements a cod trip limit within the Eastern U.S./Canada Area of 500 lb (227 kg)/DAS, up to 5,000 lb (2,270 kg)/trip, not to exceed 5 percent of the total catch, whichever is less, for all groundfish permitted vessels, unless further restricted, to create an incentive to avoid catching cod.

Amendment 13 provides that, when specified portions of the TACs have been harvested, reduced trip limits will be imposed for all groundfish permitted vessels to slow the harvest of any stock that is approaching its TAC. When 70 percent of a specified stock is projected to be caught, and catch rates indicate that the TAC for that stock will be caught by the end of the fishing year, the following trip limits will go into place: Haddock: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip; yellowtail flounder: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip. When 100 percent of a shared stock TAC is projected to be caught, the Eastern U.S./Canada Area will be closed to all groundfish DAS vessels, unless a SAP allows some fishing in the area on a specific stock and under conditions specified for that SAP. The Western U.S./Canada Area will not be closed, but may have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

The U.S./Canada Management Area measures will remain in place until altered through one of two procedures. For periodic adjustments, the Regional Administrator, through rulemaking consistent with the APA, may adjust gear requirements, modify access to fishing within the U.S./Canada Management Areas, and/or adjust trip limits to attempt to achieve, but not exceed, the annual TACs. Inseason adjustments by the Regional Administrator may be made at the points when 30 percent and 60 percent of the TACs for each of the relevant stocks are projected to have been harvested. In addition, the Regional Administrator, in consultation with the Council, can withdraw from provisions of the Understanding if the provisions are determined by the Regional Administrator to be inconsistent with the provisions of the Magnuson-Stevens Act or other applicable law, or with the goals and objectives of the FMP. If the Regional Administrator withdraws from the Understanding, all management measures in place at that time will remain in place until changed through appropriate procedures under the FMP or the Magnuson-Stevens Act.

Other existing fisheries prosecuted in the U.S./Canada Management Areas are unaffected by the Understanding measures, except that landings of GB cod, GB haddock, and GB yellowtail flounder caught in the U.S./Canada Management Areas will be counted against the Understanding TACs, regardless of gear type used.

13. SAPs

A SAP represents a narrowly defined fishery that is prosecuted in such a way as to avoid or minimize impacts on groundfish stocks of concern, as well as minimize bycatch and impact on EFH. Amendment 13 implements two SAPs that allow fishing for regulated groundfish without compromising efforts to rebuild overfished stocks or end overfishing of regulated multispecies.

CA II Yellowtail Flounder SAP. This SAP is intended to allow harvesting of GB yellowtail flounder. Vessels may fish in the CA II Yellowtail Flounder SAP, using B DAS, under the following conditions and restrictions. From June 1 through December 31, vessels may make up to two trips per month into the CA II Yellowtail Flounder Access Area to target yellowtail flounder. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP are subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS will be counted starting when the vessel crosses the boundary into the Eastern U.S./Canada Area and will end when the vessel crosses the boundary when leaving the Eastern U.S./Canada Area. In addition, vessels are limited to 30,000 lb (13,608 kg) of yellowtail flounder per trip; the cod trip limit will be one fifth of the cod landing limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg) per DAS), not to exceed 5 percent of the total catch on board; and the total number of trips into the SAP in a fishing year will be limited to 320. The Regional Administrator has broad authority to modify possession restrictions and trip limits under this SAP.

SNE/MA Winter Flounder SAP. This SAP is intended to reduce discards of SNE winter flounder in the summer flounder fishery. Under this SAP, a vessel fishing for summer flounder west of 72°30′ W. long.; using mesh authorized by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; and not fishing on a groundfish DAS; may possess and land up to 200 lb (90.7 kg) of winter flounder, subject to the following restrictions: (1) The vessel must possess a valid Federal summer flounder permit; (2) the weight of winter flounder may not exceed the weight of summer flounder on board; (3) while in the program, the vessel may not fish on a groundfish DAS; (4) all fishing must take place west of 72°30′ W. long.; and (5) possession and/or landing of other regulated groundfish species is prohibited.

14. EFH Measures

These measures are intended to minimize impacts of the groundfish fishery on EFH to the maximum extent practicable. Amendment 13 designates portions of the year-round closed areas, as well as new areas, as level 3 habitat closed areas. A level 3 habitat closed area is defined as an area that is closed indefinitely, on a year-round basis, to all bottom-tending mobile gear. Following are the EFH Closure Areas implemented by this final rule: The WGOM Habitat Closure Area; the Cashes Ledge Habitat Closure Area; the Jeffrey's Bank Habitat Closure Area; the CA I North Habitat Closure Area; the CA I South Habitat Closure Area; the CA II Habitat Closure Area; and the Nantucket Lightship Habitat Closure Area. Other measures not specifically designed to minimize impacts on EFH, but that would have benefits in terms of minimizing impacts on EFH, are also relied upon to meet the EFH provisions of the Magnuson-Stevens Act.

15. Reporting Requirements

Dealer Reporting. Dealers are required to report daily, once an electronic dealer reporting system is developed and implemented by NMFS. Dealers will be required to report the current set of data elements for all fish purchases; the disposition of the landings; and a trip identifier, which would be reported by all parties in the transaction. Electronic dealer reporting requirements for all dealers are anticipated to be implemented by May 1, 2004, through a separate rulemaking.

Vessel Reporting. Once a viable electronic system becomes available for reporting by vessels, that system will replace the current VTR system. Vessels

will be required to report all of the information currently required by the VTR, as well as a password, a trip identifier, and landings information by statistical area for each trip. Reports will be required to be submitted at least at the current statistical area level of reporting. Vessels will have the option of using any approved, viable electronic means possible to report this information. The trip identifier will be required to be reported by all parties in the transaction. Implementation of electronic vessel reporting will be accomplished through a separate, future rulemaking.

16. Sector Allocation

Under Amendment 13, a sector of the groundfish fishery may develop a plan, based on an allocation of allowable catch or effort (DAS), that only members of the sector can participate in. This provides flexibility to the industry and encourages stewardship of the resource and less need for Council and NMFS involvement, so long as certain criteria are adhered to, including FMP objectives and Magnuson-Stevens Act requirements. Under this process, a self-selected group of groundfish permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to a sector may be based either on catch, through TACs requiring closure of a fishery upon reaching the TAC (hard TAC); or on effort (DAS), with target TACs specified for the sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels, if they desire. A primary motivation for the formation of a sector is the assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside of the sector (*i.e.*, if the other vessels exceed their target TACs). The final rule is revised, based on public comment, to provide the Regional Administrator the authority to exempt members of a sector from regulations that apply to the fishery at-large, if they are in conflict with a sector's approved operations plan.

Formation of a Sector. Participation in a self-selecting sector is voluntary. Vessels that do not choose to join a sector remain in the common pool of vessels and fish under the regulations governing the remainder of the fishery. In order to form a sector, the sector applicant(s) must submit to the Council, at least 1 year prior to the date that it plans to begin operation, a proposal requesting that the Council initiate a framework adjustment to authorize an allocation of catch or effort, subject to compliance with general requirements described below and any analytical documents necessary to comply with the National Environmental Policy Act (NEPA). If the Council and NMFS publish and ultimately approve the framework action, the sector is required to submit a legally binding plan of operations (operations plan) for the sector, in accordance with the provisions specified in § 648.87(b)(2), to the Council and to the Regional Administrator. Once the operations plan is deemed complete, NMFS will solicit public comment on the operations plan through publication of a notice of proposed rulemaking in the **Federal Register**. Upon consideration of the comments received, the Regional Administrator will approve or disapprove the operations plan through publication of a final determination consistent with the APA.

Movement Between Sectors

Each sector may set its own rules with regard to movement between sectors, which must be contained in the operations plan. Once a vessel signs a binding contract to participate in a sector, that vessel is required to remain in the sector for the remainder of the fishing year. In the situation where a sector is implemented in the middle of the fishing year, vessels that fish under the DAS program outside the sector allocation in a given fishing year may not participate in a sector during the same fishing year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. If a permit for a vessel participating in a sector is transferred during the fishing year, the new owner must also comply with the sector regulations for the remainder of the fishing year. Vessels removed from a sector for violation of the sector rules are not eligible to fish under the NE multispecies regulations for the remainder of the fishing year.

General Requirements for All Sector Allocation Proposals. Allocation of fishery resources to a sector is based on documented accumulated landings for the 5-year period prior to submission of a sector allocation proposal to the Council, of each participant in the sector. Any allocations of GB cod for fishing years 2004 through 2007 must be based upon a proposed sector's documented accumulated landings during the 1996 through 2001 fishing years, but no sector may be allocated more than 20 percent of a stock's TAC. Once an allocated TAC is projected to be attained, sector operations will be terminated for the remainder of the fishing year. If, in a particular fishing year the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. If the sector does not exceed its TAC, but other vessels in the general pool do, the sector's quota in the following year will not be reduced as a result of such overages. Sectors may participate in SAPs in accordance with the rules of the SAP.

GB Cod Hook Gear Sector. Amendment 13 authorizes a sector allocation for the GB Cod Hook Gear Sector. Therefore, the GB Cod Hook Gear Sector will be allocated a maximum of 20 percent of the GB cod TAC for each fishing year for which an operations plan is approved. Participating vessels will be required to use only hook gear. For each fishing year, the sector's allocation of the GB cod TAC, up to the maximum of 20 percent of the total GB cod TAC, will be determined by calculating the percentage of all landings of GB cod made by the participating vessels, based on their landings histories for the qualifying period of 1996–2001. This calculation will be performed as follows: (1) The accumulated landings of GB cod by the sector participants for the 6 fishing years 1996–2001 will be summed; (2) the accumulated landings of GB cod by all vessels (sector participants and non-participants) during the 6 fishing years 1996–2001 will be summed; (3) the accumulated landings of GB cod by the sector participants from 1996–2001 will then be divided by the accumulated landings of GB cod by all vessels for 1996–2001; this will result in the percentage of the GB cod TAC for the next fishing year that will be allocated to the sector (up to 20 percent of the total GB cod TAC). This procedure will be repeated for each fishing year, using the landings history of GB cod by the sector participants from 1996–2001, and the GB cod TAC for that fishing year. If, in a particular fishing year, the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. When the GB cod TAC is reached, participants in the sector will be prohibited from using any fishing gear that is capable of harvesting groundfish for the remainder of the fishing year. Participating vessels may only harvest groundfish in the GB Cod Hook Sector Area (statistical areas 521, 522, 525, 526, 533, 534, 537, 538, 539, 541, 542, 543, 561, and 562). Leasing of DAS during the fishing year may occur among sector participants only. The applicant is required to submit its operations plan to the Council and NMFS for approval and public

notification prior to its implementation. Because of this process, the GB Hook Sector cannot be implemented until after May 1, 2004. In order to constrain effort in the fishery to the necessary levels, and because the sector would be based on a hard TAC allocation, any vessel that had fished a groundfish DAS during fishing year 2004, prior to the implementation of the sector, will not be allowed to participate in the sector for the first year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. New participants may join the sector at the beginning of a new fishing year, but once in the sector, a vessel must stay in the sector for the entire duration of the sector specified in the operations plan.

17. Closed Area Rationale

When any new closed areas are adopted, the Council must define the intent and specific purpose for the closure and explicitly describe the duration of the closure, who can fish in the closed area, and who cannot fish in the closed area.

18. Frameworkable Items

The following management measures may be adjusted through a framework action, in addition to those measures previously identified as framework measures in the FMP:

Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass;

DAS allocations (such as the category of DAS under the DAS reserve program), DAS baselines, etc.;

Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

Calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures;

Sector allocation requirements and specifications, including establishment of a new sector;

Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

Changes to administrative measures;

Additional uses for regular B DAS;

Future uses for C DAS;

Reporting requirements;

The GOM Inshore Conservation and Management Stewardship Plan;

GB cod gillnet sector allocation;

Allowable percent of TAC available to a sector through a sector allocation;

Categorization of DAS;

DAS leasing provisions;

Adjustments for steaming time;

Adjustments to the Handgear Only permits;

Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH;

SAP modifications; and

Anything else analyzed with respect to Amendment 13.

19. MSY Control Rules

An MSY control rule is intended to provide management advice to the Council as to what the appropriate fishing mortality rate (F) would be at a given stock size. Under Amendment 13, the MSY control rule for all stocks, with the exception of Atlantic halibut, is: The F calculated to rebuild the stock to Bmsy in 10 years, when ½ Bmsy<B<Btarget. For Atlantic halibut, the MSY control rule is: F = 0 until the stock is rebuilt (provisional control law). Due to insufficient information, it is not possible to develop a formal rebuilding program for Atlantic halibut; therefore, Amendment 13 contains a provisional control rule that reduces fishing mortality on halibut to as close to zero as possible. Amendment 9 (64 FR 55821; October 15, 1999) added Atlantic halibut to the species managed under the FMP and implemented a one-fish possession limit and set a minimum size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding by vessels that incidentally catch an occasional halibut.

20. Overfishing Definitions

Amendment 13 clarifies and revises the overfishing definitions for groundfish stocks to be consistent with the National Standard Guidelines (National Standard 1). A stock is considered overfished when the size of the stock or stock complex in a given year falls below the minimum stock size threshold or reasonable proxy thereof, and overfishing is considered to be occurring when the fishing mortality rate exceeds the maximum fishing mortality threshold for a period of 1 year. The status determination criteria for the minimum biomass thresholds is increased to at least half of the target biomass levels.

21. Target TACs

The management measures implementing Amendment 13 are intended to achieve the target TACs shown in Table 2 for calendar years 2004, 2005, and 2006. The 2006 target TACs will remain in place through the remainder of the rebuilding program, unless otherwise modified through a future Council action.

TABLE 2.—TARGET TACS FOR CALENDAR YEARS 2004–2006, IN METRIC TONS

Species	Stock	2004	2005	2006
Cod	GB	3,949	4,830	6,361
	GOM	4,850	6,372	7,470
Haddock	GB	24,855	27,692	31,866
	GOM	4,831	4,735	4,642
Yellowtail flounder	GB	11,713	11,341	11,599
	SNE/MA	707	1,982	3,325
	CC/GOM	881	1,233	1,034
American plaice		3,695	3,625	3,015
Witch flounder		5,174	6,992	7,667
Winter flounder	GB	3,000	3,000	3,000
	GOM	3,286	2,634	2,205
	SNE/MA	2,860	3,550	4,445
Redfish		1,632	1,725	1,803
White hake		3,839	3,822	3,805
Pollock		10,584	10,584	10,584
Windowpane flounder	North	534	534	534
	South	285	273	262
Ocean pout		77	77	77

TABLE 2.—TARGET TACS FOR CALENDAR YEARS 2004–2006, IN METRIC TONS—Continued

Species	Stock	2004	2005	2006
Atlantic halibut		NA	NA	NA

22. Change to Minimum Enrollment Requirement for Fishery Exemption Programs

Amendment 13 reduces the minimum enrollment requirement for five of the six existing fishery exemption/authorization programs from 30 days to 7 days, and establishes a minimum enrollment requirement of 7 days for one program where a minimum enrollment period is currently not specified. The following exemption/authorization programs previously contained a minimum enrollment requirement of 30 days: (1) The GOM Cod Landing Limit Exemption Program; (2) the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption Program; (3) the Skate Bait-only Possession Limit Exemption Program; (4) the yellowtail flounder landing limit north of 40°00′ N. lat. in the GOM/GB RMA; and (5) the yellowtail flounder landing limit north of 40°00′ N. lat. in the SNE/MA RMA. The Nantucket Lightship Party/Charter Exemption Program does not currently specify a minimum enrollment requirement. The two yellowtail flounder possession authorization programs is revised by Amendment 13 and also has a 7-day minimum enrollment requirement.

23. Policy on Cooperative Research

Because allocation of DAS is based on a vessel's historical DAS use, Amendment 13 establishes a policy that a vessel would not lose allocated DAS due to its participation in a research project or experimental fishery, if that participation can be adequately documented. If a permit holder believes that allocation of DAS under Amendment 13 has been limited by the vessel's participation in a research project or experimental fishery, the permit holder may provide to the Regional Administrator documentation to substantiate the time the vessel spent participating in a research project(s) that was not considered in the Amendment 13 DAS allocation. The Regional Administrator will consider such requests on a case-by-case basis, review the information submitted, and consider adjusting that vessel's A DAS allocation accordingly.

Comments and Responses

A total of 4,941 comments on the proposed rule and the Amendment were received by the close of business on February 27, 2004, the majority of which were two form letters drafted principally by environmental organizations, with minor modifications and signatures added by the individual commenters. A total of 162 other comments were received from individuals and organizations. This section of the final rule lists the principal comments that pertained to Amendment 13 and the proposed rule and the responses of the NMFS. An additional 1,242 comments, submitted by the Ocean Conservancy on behalf of its members and activists, were received by NMFS on March 16, 2004. In its cover letter, the Ocean Conservancy explained that these additional letters were faxed to the Agency on February 27, 2004, but were not received due to an overload of incoming faxes. All of the issues raised in these additional comment letters were raised by others and are addressed below in the response to comments.

Comment 1: A total of 126 commenters from the charter/party or private recreational sectors supported the proposed private recreational and party/charter bag limits of 10 cod and unrestricted haddock, as well as the proposed minimum size limits for cod and haddock (22 and 19 inches (55.9 and 48.1 cm), respectively). Commenters believe that the new limits allow the opportunity to catch reasonable amounts of cod and haddock and that the recreational catch and impact is small in comparison to the impact of the commercial sector. Two commenters did not support the private recreational and party/charter bag limits, and believe they should be reduced instead of increased. One commenter did not support the reduction in minimum size for cod.

Response: The principal goals of the recreational measures are to: (1) Decrease the fishing mortality on GOM cod, and (2) enable recreational fishing vessels to benefit from the rebuilding of the haddock stock. The means of achieving reductions in fishing mortality on GOM cod by the charter/party sector is imposition of a cod bag limit in the GOM. The bag limit of 10 cod per person per day for party/charter vessels fishing in the GOM RMA is more restrictive than the no-action alternative, which would not have restricted cod catch at all for party/charter vessels. The Amendment 13 analysis indicates that the recreational measures will result in a decrease in both numbers and weight of cod landed, when compared to the no-action alternative. NMFS determined that the bag limit is appropriate because it will reduce fishing mortality on GOM cod, yet will still allow charter/party vessels to attract passengers and remain in business. Reduction of the minimum length requirements for cod and haddock to 22 inches and 19 inches (55.9 and 48.3 cm), respectively, results in the elimination of the discrepancy in minimum size restrictions applied to the commercial sector, the charter/party sector and the private recreational sector. A 10 cod/person/day limit for the charter/party sector in the GOM makes the cod limit in the GOM the same for both the charter/party and the private recreational sectors. The impact of implementing the GOM cod bag limit on a per-person-per-day basis could not be evaluated using available data. Because recreational data for haddock are minimal, recreational fishing mortality of haddock is not included in the total estimates of fishing mortality for haddock.

Comment 2: One commenter did not agree with the definition of multiple day trips as any trip in excess of 15 hours and covering 2 consecutive calendar days.

Response: NMFS considers the definition of a multiple-day trip to be appropriate because it reflects current industry practices, it includes relevant criteria (trip duration and calendar days fished), and it specifies reasonable values for those criteria, such that recreational landings will be kept within acceptable levels.

Comment 3: One commenter did not support the creation of the limited access Handgear A permit and two commenters supported its creation. One commenter did not support allowing limited access Handgear A permits to be transferred without size restrictions. One commenter did not support the reduction in trip limit for cod for the open access handgear category. One commenter felt that the handgear permit rules should be subject to change through a framework action.

Response: NMFS has concluded that the creation of the limited access Handgear A permit is justified. The objective of the creation of the limited access Handgear A permit category is to control participation in the handgear fishery in order to limit its potential expansion, and therefore limit the potential for an increase in fishing effort. Amendment 13 states that, although relatively few open access Handgear vessels landed cod, haddock, or pollock, and very few landed more than 500 lb (226.8 kg), there exists the potential for the total effort associated with such vessels to increase due to the large numbers of permits, the fact that the fishery has been open access, and the fact that the activity by open access permits has been increasing. Allowing limited access Handgear A permits to be transferred without size restrictions is not likely to increase fishing power significantly. Therefore this action would not undermine the objectives of the permit category, due to the relatively small number of vessels that are expected to qualify for a limited access Handgear A permit, and because such vessels are restricted to using handgear, for which effort is not highly correlated to the size of the vessel. The reduced cod trip limit for open access Handgear A vessels is justified due to the need to reduce fishing mortality on both the GOM and GB stocks of cod. Under Amendment 13, the trip limit restrictions for regulated multispecies (other than cod) that apply to vessels with an open access Handgear permit are the same as the restrictions that apply to vessels with a limited access Handgear A permit. The restrictions associated with the handgear permits can be changed by a framework action.

Comment 4: One commenter supported the elimination of the area restriction for the northern shrimp fishery, one commenter did not support elimination of the area restriction, and one commenter stated that the assessment of bycatch in the northern shrimp fishery in Amendment 13 is inadequate.

Response: The Amendment 13 analysis of the bycatch in the northern shrimp fishery is based on research conducted by the Maine Department of Marine Resources (which quantifies the bycatch of regulated species and whiting), and concludes that, although the impacts of eliminating the area restriction on this fishery cannot be estimated with certainty, they should be minimal. The required use of the Nordmore grate, which remains in effect, minimizes the catch of regulated multispecies in this fishery. Although the bycatch of whiting may be significant, the northern stock of whiting is rebuilt and the removal of the area restriction on the northern whiting fishery is not likely to impair management of that species.

Comment 5: One commenter did not support providing access for vessels fishing with tuna purse seine gear to CA I, CA II, and the NLCA, and one commenter supported such access.

Response: The objective of this measure is to provide greater flexibility to tuna purse seine vessels while still protecting groundfish. The Amendment 13 analysis concludes that, although groundfish bycatch may increase very slightly, the impacts will not be significant due to the low numbers of vessels in the fishery (five), the limited fishing season, and the method of fishing. Fishing in these areas by tuna purse seine vessels may shift the location of where bycatch in this fishery is caught, but not increase bycatch over recent levels. Several years of experimental fishing by tuna purse seiners in groundfish closed areas has supported the conclusion that such access will have minimal impacts on non-target species.

Comment 6: Four commenters felt that the proposed addition of clam dredges to the list of gears excluded from the NLCA was not justified because of the value of the surfclam and ocean quahog resource in the NLCA, and their belief that exclusion of the gear from this area would not have positive benefits for either groundfish EFH or the rebuilding of the groundfish fisheries. The commenters support full access to the NLCA based on best scientific information. One commenter felt that the exclusion of dredge gear from the area gives preference to the groundfish fishery over the surfclam and ocean quahog industry and is therefore a violation of National Standard 4.

Response: The effect of the measures in the proposed rule would have been to exclude clam dredges from all portions of the NLCA. NMFS agrees that the Amendment 13 does not analyze the prohibition of clam dredges in the NLCA outside of the Nantucket Lightship Habitat Closure Area and that there is no evidence that the proposed exclusion would provide meaningful positive benefits to groundfish, and consequently has disapproved the measure excluding clam dredges in the portion of the NLCA closed exclusively to protect groundfish. However, Amendment 13 does analyze the prohibition of clam dredges in the habitat closed areas as part of a level 3 closure (closed to all bottom-tending mobile gear). This prohibition is part of the strategy for protecting vulnerable EFH located within the habitat closed area and is not for bycatch reduction purposes. The best available science was utilized in the analysis supporting this measure. The conclusion of the Northeast Gear Effects Workshop was that hydraulic clam dredges have a high impact on physical and biological structure of benthic habitat in sandy substrates. It was determined that recovery of physical structures could range from days to months, and that recovery of biological structures could range from months to years, depending upon the background energy of the environment. These conclusions are supported by existing research, as summarized in the fishing gear effects section of Amendment 13. In terms of overall regional priorities for management of fishing impacts on EFH, it was concluded that otter trawls and scallop dredges are a higher overall priority because of their wider geographic use over a wider variety of substrate types. However, it was agreed that localized effects could be very significant if the dredged area is productive habitat for one or more managed fish resources, or if the area coincides with strong settlement of larval fish. The EFH vulnerability analysis conducted for Amendment 13 shows that 9 New England managed species, comprising 17 distinct life stages, are moderately or highly vulnerable to hydraulic clam dredges. Vulnerability was based upon the known impacts of the gear type, the potential for lost habitat function, the sensitivity of the habitat to disturbance, and the overlap of gear usage with EFH. In addition, Amendment 13 concludes that adverse and potentially adverse impacts from hydraulic clam dredges occurs primarily in the Mid-Atlantic and secondarily in southern New England, on sand substrates. The Nantucket Lightship Habitat Closed Area contains vulnerable EFH for most of these species. Prohibition of all types of bottom-tending mobile gear in this closed area is necessary to provide the most effective protection to this vulnerable EFH. Exemption of clam dredges in the habitat closed area would negate most, if not all, of the habitat benefits, rendering the closed area strategy ineffective and therefore impracticable. The environmental and socio-economic impacts of the habitat closed areas were analyzed as part of Amendment 13 and were considered in the approval decision. The exclusion of clam dredges from the Nantucket Lightship Habitat Closure Area is not a violation of National Standard 4 because

it is necessary to achieve the desired EFH protection and since other bottom-tending mobile gear is also prohibited in all of the habitat closure areas.

Comment 7: One commenter recommended disapproval of a portion of the Nantucket Lightship Habitat Closure Area that is subject to a level 3 habitat closure (closed to bottom-tending mobile gear). Specifically, the commenter was concerned about the trapezoid-shaped area that lies outside of the current NLCA.

Response: Disapproval of a portion of the proposed Nantucket Lightship Habitat Closure Area would constitute a modification to the configuration of that area and undermine the objectives of providing EFH protection. Although Amendment 13 analyzed the aggregate economic and biological impacts of various combinations of habitat closure areas, the configuration that the commenter supports was not part of the alternative adopted by the Council, analyzed in Amendment 13, and considered by the public and, therefore, there is no basis to support the commenter's claims. Therefore, the measure is consistent with applicable law.

Comment 8: One commenter supported the proposed exemption that would allow fishing by shrimp trawl vessels in the WGOM Habitat Closure Area.

Response: NMFS has disapproved the measure that would allow shrimp trawlers to fish in the WGOM Habitat Closure Area, as discussed and justified in the preamble to this final rule under ''Disapproved Measures.''

Comment 9: Five commenters supported approval of all four proposed SAPs in order to provide economic opportunity to the industry to harvest groundfish stocks at a more optimal level.

Response: NMFS agrees that allowing for SAPs is important for the reasons stated. However, in order for a SAP to be approved, it must comply with the objectives of the FMP, National Standards, and all applicable laws. The premise for a SAP is that, if specific fisheries for healthy stocks of groundfish can be identified that do not undermine achievement of the goals of the FMP, fishing under certain restrictions within a SAP can be allowed. Prior to NMFS approval, a SAP must be fully developed and the analysis of its impacts must demonstrate that the SAP is consistent with the objectives of the FMP, as well as enforceable. The CA II Yellowtail Flounder SAP and the SNE/MA Winter Flounder SAP meet these criteria, and were therefore approved in Amendment 13 and implemented by this final rule. The CA II Haddock SAP and the CA I Hookgear Haddock SAP, however, do not meet one or more of these criteria and were, therefore, disapproved, as discussed more fully in the preamble to this final rule under ''Disapproved Measures.''

Comment 10: The Council submitted comments of a technical nature suggesting clarifications to the proposed regulations. The U.S. Coast Guard also submitted a technical comment. These included suggested additional definitions of terms, and clarifications to or additions of additional regulatory language.

Response: NMFS agrees with most of the suggested clarifications and has made these changes in this final rule. The specific changes are identified in this preamble under ''Changes to the Proposed Rule.''

Comment 11: Three commenters noted that the proposed rule would alter the frequency of VMS polling to twice per hour (from once per hour) for groundfish DAS vessels, once a vessel has elected to fish in the U.S./Canada Management Areas, regardless of whether or not the vessel is fishing in the U.S./Canada Management Areas. The commenters stated that this is not an Amendment 13 requirement, and is therefore not justified. A commenter further stated that polling twice per hour in the U.S./Canada Management Areas only is unjustified, given that vessels must declare into these areas, and that the areas are large.

Response: NMFS agrees that groundfish DAS vessels that are required to utilize VMS should not be required to pay for being polled twice per hour when not fishing in the U.S./Canada Management Areas, and has removed this restriction in this final rule. However, the requirement that vessels must pay for polling twice per hour when fishing in the U.S./Canada Management Areas has not been removed to enhance enforcement of the Understanding. Despite the large size of the U.S./Canada Management Area, there remains the potential for vessels fishing near the perimeters of this area to fish in both portions of this area (Eastern and Western) and/or to fish outside the area. In order to monitor the TAC in the U.S./Canada Management Area, it is critical that NMFS has a system to track the location of fishing vessels. Decreasing the time interval between polls paid by vessels enhances NMFS's monitoring of the fishing activity in his area.

Comment 12: The Council commented that, should the cod possession limit for vessels fishing under a limited access Handgear A permit be adjusted in proportion to a change in the GOM trip cod trip limit for DAS vessels, as allowed under this final rule, this adjustment should be rounded up to the nearest 50 lb (22.7 kg) in order to facilitate compliance with, and enforcement of, the adjusted trip limit. The Council also recommended that, if the cod possession limit for open access Handgear permits is adjusted in proportion to a change in the GOM cod trip limit for DAS vessels, this adjustment be rounded up to the nearest 25 lb (11.3 kg).

Response: NMFS has made these revisions to this final rule.

Comment 13: Two commenters did not support a provision in the proposed rule that would require DAS leasing applicants to include on the lease application the amount of money for which the DAS are being leased. The commenters felt that disclosure of such information is an infringement on the privacy of the applicants.

Response: Information about the value of a leased DAS is very important to future efforts to understand the impacts of the DAS Leasing Program and to evaluate whether the program is successful in providing flexibility to the industry. A more thorough understanding of the economics of the groundfish fishery will enable managers to analyze the economic impacts of fishery regulations more accurately. This requirement is consistent with Secretarial authority under the Magnuson-Stevens Act. Only aggregated information on the price paid for DAS leased will be made public. Specific information contained in an application will remain confidential.

Comment 14: One commenter suggested that, after a DAS lease has been approved by NMFS, a provision should be created to allow a lessee to return DAS to the lessor(s) in the event of exceptional circumstances, such as the sinking of the lessee vessel.

Response: Amendment 13 did not propose such a provision. Furthermore, such a provision would require NMFS to incur additional costs to develop and maintain additional data management capabilities and administrative procedures to support a DAS transaction that is expected to be relatively rare and, therefore, not justified under National Standard 7.

Comment 15: Four commenters did not support the requirement that vessels fishing in the U.S./Canada Management Area be prohibited from fishing outside this area on a particular trip. Some suggested that vessels be allowed to fish in both the Western and Eastern areas on the same trip, while others suggested

that the restriction apply only to the Eastern U.S./Canada Area.

Response: The requirement that a vessel fish in either the Eastern or Western U.S./Canada Area, and no other area on a particular trip, is necessary to monitor and enforce the catches of cod, haddock, and yellowtail flounder accurately and to attribute these catches to the particular area in which they were caught. If a vessel were allowed to fish both outside and inside one of the U.S./Canada Management Areas, it would be extremely difficult to assess the amount of each species caught in the respective areas and to enforce related measures. Catches must be accurately attributed to either the Eastern or Western U.S./Canada Area because the TACs are area-specific. In addition, because the Eastern and Western U.S./Canada Areas are subject to different trip limits and gear restrictions, allowing vessels to fish in both areas on a single trip would make enforcement of these restrictions impossible.

Comment 16: Five commenters noted that the requirement to use either a haddock separator trawl or a flounder net should apply only to the Eastern U.S./Canada Area and not to both the Eastern and Western U.S./Canada Areas, because the intent of the requirement is to achieve, but not exceed, the cod, haddock, and yellowtail TACs under the U.S./Canada Understanding. They noted that the cod and haddock TACs apply only to the Eastern U.S./Canada Area. One commenter noted that the requirement to utilize these gears in the Western U.S./Canada Area would result in large losses of flounders, monkfish, pollock, and other species.

Response: NMFS has made the suggested change in this final rule. Although Amendment 13 includes conflicting information with regard to the scope of the net requirements, it is clear from Amendment 13 and comments submitted by the Council that the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal.

Comment 17: Four commenters stated that the requirement that vessels intending to fish in the U.S./Canada Area Management Area must notify the observer program of their intent to fish 5 days prior to the start of the trip is excessive and does not reflect the way vessels operate. The commenters suggested that the notification requirement be reduced to 2 days prior to the start of the trip.

Response: NMFS believes that the 5-days notice is necessary for vessels that intend to fish in the U.S./Canada Management Area, in order to provide NMFS adequate time to plan and execute observer deployments, based on the level of observer coverage required in the fishery. NMFS must assess observer availability, contact observers, and allow time for the observer to travel to the port of departure. Frequently, an observer is already deployed on another vessel and is not immediately available.

Comment 18: Three commenters believed that the closure of the Eastern U.S./Canada Area should apply only to vessels fishing on a groundfish DAS, and not to all vessels fishing with gear capable of catching groundfish. The commenters stated that this is inconsistent with Amendment 13.

Response: NMFS acknowledges that the intent of Amendment 13 was to limit the scope of the Eastern U.S./Canada Area closure to vessels fishing on a groundfish DAS. This final rule reflects that change. This change alleviates an unintended impact on non-groundfish fisheries.

Comment 19: One commenter stated that the Sector Allocation regulations that authorize the Council to allocate DAS to a Sector is not consistent with Amendment 13 and should be removed.

Response: Although the Amendment 13 document does not include specific criteria related to the allocation of DAS to a Sector, in section 3.4.16.1.2 (where criteria for allocation of TAC is described), the discussion of Sector allocation in Amendment 13 includes numerous references to the concept of DAS allocations to a Sector. The regulations include a reference to DAS allocations in order to be consistent with the Amendment and to make clear that the Council has the authority to allocate DAS and/or develop criteria for the allocation of DAS to a Sector. No such allocation is being proposed in the final rule and any future allocation of DAS to a sector would have to be analyzed and justified in the action authorizing such future allocations.

Comment 20: One commenter believed that the 500 lb (226.8 kg) GB cod trip limit was inconsistent with the intent of Amendment 13 and should apply only to the Eastern U.S./Canada Area, and not to the Western U.S./Canada Area as the proposed rule states.

Response: NMFS agrees that Amendment 13 intended that the GB cod trip limit should apply only to the Eastern U.S./Canada Area and has made this change to the final rule. This proposed restrictive cod trip limit is consistent with Amendment 13, as it is applicable to the U.S./Canada Area specific to cod, *i.e.*, the Eastern U.S./Canada Area.

Comment 21: One commenter noted that, according to the proposed rule, when the U.S. TAC for GB yellowtail flounder is attained, the prohibition on possession applies only to the Western U.S./Canada Area, but felt that this is inconsistent with the intent of the Council and Amendment 13. The commenter suggested that the prohibition instead apply both to the Western and the Eastern U.S./Canada Area, in order to be consistent with Council intent.

Response: NMFS agrees that the intent of Amendment 13 and the Understanding was to prohibit retention of GB yellowtail flounder in both the Western and Eastern U.S./Canada Areas. Upon attainment of the U.S. yellowtail flounder TAC, the Eastern U.S./Canada area will close to vessels fishing under a groundfish DAS, except if fishing in an open SAP. For all other vessels, prohibition of retention of yellowtail flounder in the Eastern U.S./Canada Area, as well as the Western U.S./Canada Area, is necessary to comply with the Understanding.

Comment 22: One commenter felt that vessels fishing under an A DAS in the U.S./Canada Management Area should be subject to less restrictive measures.

Response: The suggested measure is not consistent with or included in Amendment 13, and therefore cannot be considered for inclusion in this final rule.

Comment 23: One commenter stated that he believed that there were too many restrictions associated with fishing in the U.S./Canada Management Areas, and that vessels would refocus their fishing efforts in the near shore waters instead.

Response: The restrictions associated with fishing in the U.S./Canada Management Area result primarily from the management strategy chosen to implement and ensure compliance with the Understanding and Amendment 13 objectives. The strategy selected was a system of hard TACs associated with specific geographic areas. In order to implement this hard-TAC system, there must be a means to monitor the amount of catch by species and by area, as well as a means to curtail catch when the TACs are attained. The measures associated with the U.S./Canada Management Area provide a means to monitor the TACs and curtail fishing, as necessary to ensure that the TACs are not exceeded. As an incentive to fish in the Eastern U.S./Canada Area, vessels will not be charged DAS while steaming

to and from that area. The Council may consider recommending additional incentives in a framework action as provided for Amendment 13.

Comment 24: The Mid-Atlantic Council commented that it does not support the reductions in Category A DAS, and expressed concern that there may be increased participation in Mid-Atlantic fisheries, such as the squid fishery, as a result of groundfish vessels that attempt to recover lost groundfish revenue (as a result of the DAS reductions). The Mid-Atlantic Council indicated that the Amendment 13 analysis is inadequate because it does not include specific information on the increased landings that result in Mid-Atlantic fisheries, or the species composition of such landings. Because of the perceived shortcomings in the Amendment 13 analysis, the Mid-Atlantic Council concluded that the proposed DAS measures are inconsistent with National Standard 8.

Response: The DAS measures are not inconsistent with National Standard 8. The quantitative analysis in sections 4.6 and 4.7 of Amendment 13 provides extensive discussions and considerations of impacts on fishing communities as required by National Standard 8. Further, section 5.4.13.1.3 of the Amendment provides information on the number of permits in other fisheries held by NE multispecies limited access permit holders, their reliance on groundfish revenue, and the level of participation of such permit holders in other fisheries. Although the analysis does not predict landings, it provides useful information that describes the relative scope and nature of the potential effort shift relating to different ports and communities. The economic analysis indicates that the vessels that will be most affected by Amendment 13 are those that are dependent on groundfish for 75 percent or more of their gross revenue. A large number of these vessels have monkfish, spiny dogfish, General category scallop, or bluefish permits, and less than 10 percent have limited access squid permits. Much of the ability to shift into other fisheries is limited to trawl gear. Therefore, Amendment 13 has taken into account impacts of measures and ways to minimize such impacts consistent with National Standard 8.

Comment 25: A total of 3,236 commenters, consisting mostly of form comments did not support the phased reduction rebuilding strategy, which, for some stocks, implements a rebuilding program that begins with a fishing mortality rate that is above the threshold rate, and further reduces the target fishing mortality rate in the future. The principal concerns were that, under this strategy, overfishing for some stocks is not being ended immediately; the rebuilding of the stocks would take an excessive amount of time, and requiring additional time to rebuild stocks, is more risky, and therefore a threat to the health of the stocks and the ecosystem; and overall, the Amendment 13 rebuilding plan is not consistent with the Magnuson-Stevens Act and National Standard guidelines issued by NMFS. Approximately half of these commenters felt that the proposed rebuilding plans were not adequately evaluated, and that Amendment 13 should set rebuilding schedules and rebuilding targets on a species-by-species basis. One commenter supported implementing a phased reduction strategy for all stocks. One commenter supported the rebuilding strategy and noted that combining the adaptive and phased mortality reduction strategies mitigates the economic impacts of the high biomass targets.

Response: NMFS has concluded that the proposed phased strategy in fishing mortality reduction is consistent with the Magnuson-Stevens Act and the National Standards. The Magnuson-Stevens Act sets out requirements for preventing or ending overfishing and rebuilding fish stocks at 16 U.S.C. 1851(a)(1) (National Standard 1), 1853(a)(1) and (10), and 1854(e). NMFS promulgated National Standard guidelines relating to these requirements specifically at 50 CFR 600.310. Although the Magnuson-Stevens Act, at 16 U.S.C. 1854(e)(3), requires a management plan to be prepared by the council within a year after stocks are identified as being overfished, there is nothing in the Act or the guidelines that require that overfishing be ended immediately upon implementation of such a plan, as argued by commenters. The only timing requirement in the Magnuson-Stevens Act and guidelines, regarding the time necessary to end overfishing and rebuild fish stocks, is that rebuilding must be achieved as soon as possible, not to exceed 10 years, after taking into account various factors, including the status and biology of the stock and the needs of fishing communities. *See* 16 U.S.C. 1854(e)(4). To require the ending of overfishing immediately would establish a rigid standard that could result in an unnecessarily short rebuilding time frame, without consideration being given to the factors mentioned above. This result would be inconsistent with 16 U.S.C. 1854(e)(4), because it would undermine the ability of the Secretary to exercise his discretion in determining how long a rebuilding schedule should be, in consideration of the factors that the Magnuson-Stevens Act deems important. It is entirely consistent, therefore, with the Magnuson-Stevens Act that the ending of overfishing can be achieved at any time during the prescribed rebuilding schedule, as long as the ability to rebuild is not jeopardized.

To put Amendment 13 in perspective, only 8 of the 19 groundfish stocks are experiencing overfishing. Overfishing will continue to occur for only 5 of the stocks being managed under the phased approach. Nevertheless, severe decreases in current fishing mortality are scheduled for the first year of the rebuilding plan, and overfishing on all stocks is expected to end by year 5. Amendment 13 also contains provisions (*e.g.*, default measures to reduce DAS in 2006 and 2009) designed to ensure that further reductions in fishing mortality will take place if, after future assessments, stocks are not projected to rebuild within their specified rebuilding periods.

NMFS has concluded that it is unlikely this strategy will jeopardize the rebuilding of any stock. The NE multispecies fishery is comprised of 19 stocks, many of which co-occur in the same geographic areas, and are subject to fishing by a great diversity of commercial and recreational fishers. The complexity of the fishery and the co-occurrence of stocks of concern and stocks that are not overfished is one of the reasons Amendment 13 utilizes both the adaptive and phased strategies to reduce fishing mortality to rebuild stocks. Immediate cessation of overfishing on all stocks does not adequately take into account and allow for variations among, and contingencies in the fishery, and would cause more severe economic consequences than those projected under the selected fishing mortality reduction strategy. The selection of a phased mortality reduction strategy for some stocks, and an adaptive approach for the remainder of stocks, represents a balancing of the objectives of reducing fishing mortality and minimizing economic impacts, while achieving the goal of rebuilding all overfished stocks of groundfish.

For two of the five groundfish stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 49 percent and 59 percent (American plaice and SNE/MA yellowtail flounder, respectively), and will subsequently be reduced to Fmsy, thus ending overfishing completely in 2 years. For three of the

five stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 45 percent, 65 percent, and 37 percent, (GB cod, CC/GOM yellowtail flounder, and white hake, respectively), and subsequently reduced to at or below Fmsy in 5 years. These reductions in fishing mortality assume that 85 percent of allocated DAS will be used. In all cases, Amendment 13 contains management measures designed to rebuild the 12 overfished stocks. The time periods required to rebuild the 12 overfished stocks described in Amendment 13 do not exceed the criteria described in the National Standards guidelines and are in accordance with the ''Constraints on Council action'' in § 600.310(e)(4).

NMFS disagrees that the rebuilding plan was not adequately analyzed. The Amendment 13 analysis of the rebuilding strategies includes expected trajectories of the spawning stock biomass of overfished stocks for both the proposed and the alternative rebuilding strategies. The analysis shows the increase in biomass over time, and in relation to the target biomass (*i.e.*, rebuilt biomass), and is, therefore, sufficient to determine the adequacy of the rebuilding strategy with respect to both the magnitude of rebuilding and the amount of time rebuilding will take. The three rebuilding strategies (constant fishing mortality, phased reduction fishing mortality, and the adaptive approach), which are compared in section 5.2.1.8 of Amendment 13, are all designed to achieve the target biomass within the rebuilding period with a 50 percent probability.

Comment 26: A total of 4,779 commenters, consisting of mostly form comments, felt that Amendment 13 needs to include stock specific catch limits to control fishing mortality.

Response: Stock-specific catch limits (hard TACs) were among those alternatives that were analyzed in Amendment 13 and considered by the Council, but they were not recommended in Amendment 13. The Amendment 13 states, and NMFS concurs with, the following rationale for this decision: ''The Council is concerned that this alternative would lead to a derby fishery, and either excessive discards (if possession of a species is prohibited when a TAC is reached) or a sacrifice in yield from healthy stocks (if groundfish fishing is prohibited when a TAC is reached). In addition, managing 19 stocks, with overlapping geographic ranges, would be administratively difficult. A past Council attempt to manage the fishery with a hard TAC was an abject failure.'' Although the Council determined that stock-specific catch limits are not an appropriate management tool to be applied to all stocks, Amendment 13 implements such limits for the GB stocks that are shared with Canada (cod, haddock, and yellowtail flounder).

In addition, Amendment 13 contains various measures to reduce fishing mortality. The implementation of DAS reductions, trip limits and closed areas are all designed to achieve the majority of the fishing mortality reduction. Furthermore, gear restrictions serve as an additional means of controlling fishing effort, as well as enhancing stock structure.

Comment 27: A total of 1,549 commenters, consisting mostly of form comments, felt that Amendment 13 represents an important opportunity to reform the FMP, and should therefore incorporate the commenters' suggested revisions.

Response: Amendment 13 represents an important opportunity to improve the FMP and contains various conservation and management measures for the Northeast groundfish fishery. A partial list of the novel types of management programs that Amendment 13 implements includes the following: Control of latent effort and refinement of the use of DAS through the DAS baseline and categorization of DAS; coordination of management of shared GB stocks with Canada in order to maximize benefits from shared stocks; real-time dealer electronic reporting, habitat closure areas to protect EFH, DAS leasing and transfer to programs provide flexibility under reduced DAS allocations, and selective use of hard TACs.

Comment 28: One commenter requested clarification of justification for the starting date of the rebuilding periods.

Response: The rebuilding periods begin in 2004 because the Amendment 13 management measures are expected to be implemented in 2004. The National Standard Guidelines state: ''A rebuilding program undertaken after May 1, 1998, commences as soon as the first measures to rebuild the stock or stock complex are implemented.'' Prior to implementation of Amendment 13, there were no formal rebuilding programs for the overfished stocks. In 1999, Amendment 9 to the FMP implemented status determination criteria, but did not implement rebuilding programs. An amendment to the FMP was necessary to develop and implement a comprehensive rebuilding strategy for the FMP. To retroactively impose a 1999 start date 5 years later would make it virtually impossible for the agency to reasonably take into account all of the National Standards and other required provisions of the Magnuson-Stevens Act, because rebuilding would have to be accomplished for all stocks in a truncated time period. The measures in Amendment 13, beginning in 2004, will rebuild the groundfish stocks, while at the same time ensuring that other considerations required by the law regarding impacts on the industry are fully considered and accounted for. NMFS has concluded, therefore, that its decision to start the rebuilding clock in 2004 is more consistent with the applicable law and is more appropriate than starting it in 1999.

Comment 29: One commenter felt that the GB stock of yellowtail flounder should be under a rebuilding program.

Response: The GB stock of yellowtail flounder is neither overfished, nor has the stock previously been declared overfished. Therefore, there is no requirement for a rebuilding program. Amendment 13 measures are designed to maintain the GB stock of yellowtail flounder at a level consistent with optimum yield.

Comment 30: One commenter believed that Alternative 1B in Amendment 13 should have been selected because this alternative would have the least economic impacts. The commenter compared the estimates of numbers of jobs affected, the amount of lost revenue, and the loss in personal income associated with the proposed alternative and those associated with Alternative 1B and concluded that the proposed alternative would produce the same long-term results, yet at a much larger first-year cost.

Response: NMFS recognizes that Alternative 1B is a significant alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B would yield a reduction of $28 million in first year revenues compared to $40 million for the selected alternative. However, analysis of Alternative 1B did not substantiate that it would result in higher economic benefits over the long-term. Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent on 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. In other words, the model used to evaluate both biological and economic impacts only produces a short-term, one year forecast. DAS reductions for years 2005–

2007 could not be estimated given the limitations in the modeling. Even assuming projections were made for these years, the projections would likely be overestimated, and would not be representative of likely impacts. Presumably, at least part of the economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. Applying the area closure model to the full 65 percent reduction in DAS would have misrepresented the year 4 impacts. Alternative 1B also contains the 2:1 DAS counting in SNE/MA and the raised footrope trawl in the CC/GOM stock area. It is important to note that, in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10 percent reduction in DAS. NMFS believes that it is more likely that the negative cumulative impacts of 4 years of DAS reductions would exceed that of the selected alternative, especially since the difference between the two alternatives in 2004 is only about $12 million in revenues. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, Amendment 13 notes that the negative impacts attributable to the selected alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the selected alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1 was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction. A thorough breakdown of economic impacts by industry and by port is provided in Volume 1, section 5.4.6, of Amendment 13. Results of that analysis fulfill the requirements of E.O. 12866, which requires the Agency to take into account all economic impacts to the Nation resulting from the proposed rulemaking.

Comment 31: One commenter felt that NMFS must revise the recovery rate analysis in the fishing gear habitat impact assessment because there are contradictions in certain sections that do not comply with National Standard 2.

Response: Amendment 13, in Section 9.3.1.8.4.2, Potential Adverse Impacts of Bottom Trawls and Dredges, states that the recovery rate for damaged sponges and soft corals is 12 months, based upon the literature that was reviewed in section 9.3.1.2.4.2. Forty-four relevant peer-reviewed and non-peer-reviewed publications were included in the literature review and comprise the best available science on the subject. Recovery rates were provided when reported by the authors of the scientific studies. Discrepancies between recovery rates listed in tables 453–455 and those reported by the 2001 Gear Effects Workshop are due to the subjective nature of the responses provided by the Workshop participants compared to the research results published by various authors. NMFS is confident that the best available science was utilized in the fishing gear effects analysis and that the document is in compliance with National Standard 2.

Comment 32: One commenter felt that NMFS range of habitat closure alternatives is inadequate.

Response: The Amendment 13 considers a wide range of reasonable alternatives to minimize the adverse effects of fishing on EFH to the extent practicable. The alternatives range in terms of the type of management tool used, and are analyzed in terms of the practicability standard prescribed by the Magnuson-Stevens Act and implementing regulations. There are several alternatives considered representing each of the three identified management tools (effort reduction, gear modification, and closed areas). There are 11 distinct alternatives described using the closed area tool. These alternatives range from use of existing area management scenarios to expansion of existing area management scenarios, to development of new closed areas not dependent upon any previous area closures. Specifically, the National Research Council (NRC), as well as an international panel of experts convened for the 2001 Northeast U.S. Fishing Gear Effects Workshop, have recognized that there are three fishery management tools available to mitigate the effects of trawls and dredges on seafloor habitats: Fishing effort reduction, gear modifications, and area closures. The NRC stated that effort reduction is the cornerstone of managing the effects of fishing on habitat, but typically some combination of these three measures will be most effective. Amendment 13 utilizes this concept and analyzes a range of reasonable alternatives under each one of the tools listed below in the context of practicability of the measures.

Effort Reductions: The major goals of Amendment 13, as described in section 2.2, Purpose and Need for Action, is to rebuild overfished fisheries, end overfishing where it occurs, minimize bycatch to the extent practicable, and to provide options for reducing harvesting capacity. Approximately 35 management measures will be implemented to achieve these goals. These non-habitat measures are described and analyzed in sections 5.3.6.7 and 5.3.8.2 as Habitat Alternative 2 (Benefits to EFH of Other Amendment 13 Measures). The analysis concludes that the net effect of these measures are positive or provide a benefit to habitat.

Gear Modifications: Several alternatives have been developed related to otter trawl gear or fishery modifications to mitigate impacts to bottom habitats to the extent practicable. Habitat Alternative 8 (Restrictions on the use of rockhopper and/or roller gear) provides five specific alternatives (Alternatives 8a–8e) to minimize potential adverse effects of otter trawls on habitat. Habitat Alternative 9 would require the use of VMS on all groundfish vessels to provide high resolution data on the distribution of fishing effort.

Area Closures: The majority of the alternatives developed to minimize or mitigate adverse impacts of fishing on habitat to the extent practicable revolve around closed areas. Eleven distinct closed area alternatives were developed and analyzed. Three alternatives were developed specifically to protect hard-bottom areas (Habitat Alternatives 3a, 3b, and 4). Four alternatives were developed to balance EFH protection with fishery productivity (Habitat Alternatives 5a, 5b, 5c, and 5d). Three alternatives were developed to utilize existing groundfish mortality closure areas to gain additional habitat protections (Habitat Alternatives 6, 10a, and 10b), and one alternative (Habitat Alternative 7) was developed to prohibit additional fishing gear in the groundfish mortality closure areas.

Comment 33: A total of 1,550 commenters, consisting mostly of form comments, stated that Amendment 13 fails to protect sensitive cod nursery grounds from trawling and weakens protection for juvenile cod (no action protects 22.9 percent of juvenile cod EFH, and the proposed action (Alternative 10b) protects 15.3 percent of juvenile cod EFH).

Response: NMFS disagrees. The Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH. The Amendment 13 FSEIS concludes (section 9.3.1) that there are 23 managed species, comprising 42 distinct life stages, that have EFH that is vulnerable to the effects of bottom-tending mobile gear. Therefore, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on the EFH of these 42 species/life stages, not all of which utilize or require the same habitat type (FSEIS Table 161). Amendment 13 undertook an approach to balance EFH protections among all 42 species/life stages, instead of targeting minimization measures on one species/life stage. Amendment 13 implements a series of management measures that represent several major strategies for providing direct and indirect protection to a wide variety of vulnerable EFH. Implementation of Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibit the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages is, afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition to these closed areas, Amendment 13 implements many management measures aimed at achieving major reductions in the overall fishing effort within the groundfish complex (*See* section 5.3.6.7 and 5.3.8.2 describing Habitat Alternative 2). These fishing effort reductions relate to reduced impacts on benthic habitats, thereby providing more indirect protections to vulnerable EFH.

In comparison to the No Action Alternative, Habitat Alternative 10b provides direct protection to 15.3 percent of the juvenile cod EFH and to the EFH of 38 other species/life stages, compared to the temporary and intermittent protections afforded under the No Action Alternative (section 5.3.6.1.2.1). Although the No Action Alternative is listed in various tables in section 5.3.8 as a point of reference for closed area alternatives, it is not directly comparable because of the type of closure it represents. The values provided under the No Action Alternative represent the existing groundfish mortality closures, which are not closed for habitat protection purposes and are available to access by various bottom-tending mobile gears. This is why section 5.3.8.3.2, Summary of EFH Benefits of Area Closure Options, does not compare the No Action Alternative to the 10 closed-area alternatives. Amendment 13 shows that Habitat Alternative 10b is superior and practicable, providing permanent or indefinite protection to 15.3 percent of the juvenile cod EFH, compared to no permanent or indefinite protection provided by the No Action Alternative. Alternative 10b does not weaken EFH protections for any species. In considering these alternatives, the Council and NMFS also determined that Alternative 10b met the practicability standard of 50 CFR 600.815(a)(2)(iii) (*See* section 5.3.10 of Amendment 13).

Comment 34: One commenter felt that the majority of the habitat alternatives were developed in 2000 and 2001, prior to the reinitiation of scoping in 2001, and over a year before the completion of the gear impacts assessment in the fall of 2002. Thus, the commenter stated the record shows that these alternatives were not based on the best available scientific information and violate National Standard 2.

Response: The scoping for the EFH components of Amendment 13 commenced on February 1, 2001 (66 FR 8568) and continued through April 4, 2001 (66 FR 13281). At the conclusion of the scoping period, the public comments, including all recommended alternatives, were compiled and discussed by the Council's Habitat Technical Team in April 2001, with recommendations forwarded to the Habitat Committee and the Council. It was not until after the conclusion of the public scoping period that alternatives were considered for analysis by the Council. In fact, reasonable alternatives were considered by the Council through 2003. Recommended alternatives that were not analyzed were classified as considered but rejected, and can be found in section 4.2 of Amendment 13.

In terms of the gear impacts assessment, the 1998 EFH Omnibus Amendment concluded that bottom-tending mobile gear may adversely effect EFH, particularly complex bottom habitats. This conclusion has not changed over time, but has been further supported by more recent scientific studies. Therefore the basis for development and selection of alternatives to minimize adverse effects of fishing on EFH has not changed since 1998. The Gear Effects Evaluation provided in Amendment 13 (Section 9.3.1.2) reflects this newest science and therefore complies with National Standard 2.

Comment 35: One commenter stated that Amendment 13 fails to separate EFH protections for GOM juvenile cod EFH and GB juvenile cod EFH, since these stocks are managed separately.

Response: EFH is designated by species and by life stage over the entire range of the species. There is no requirement to designate EFH by species, by life stage, and by stock. Presently, EFH is not described by stock, and analysis of habitat impacts by stock would create significant managerial and scientific difficulties, without concomitant benefit to the species. NMFS has determined, therefore, based upon the best available science, that the EFH of both GOM and GB cod stocks are protected to the extent practicable under current management practices.

Comment 36: One commenter felt that NMFS must develop alternatives to designate habitat areas of particular concern (HAPC) to comply with the *AOC* v *Evans* Court Order (Civ. No. 99–00982 GK (D.D.C)).

Response: Amendment 13 meets legal requirements of the Magnuson-Stevens Act and the AOC Joint Stipulation. The groundfish FMP already has established one HAPC in Closed Area 2. The Council has established a process for further consideration of HAPCs and is currently seeking public comment on this issue as part of the development of EFH Omnibus Amendment 2.

Comment 37: One commenter felt that NMFS should reject Habitat Alternative 2.

Response: Habitat Alternative 2 includes approximately 35 measures to achieve the non-habitat-related goals of Amendment 13, and provides indirect net benefits to EFH (*see* analysis in section 5.3.8.2 of Amendment 13). Habitat Alternative 2 is not the only alternative that is being relied upon to minimize the adverse effects of fishing on EFH. The EFH final rule (67 FR 2343) specifically requires that the evaluation of fishing effects must list management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The response to Comment 32 also contains pertinent information in response to this comment.

Comment 38: Two commenters suggested that NMFS partially reject Habitat Alternative 10b, and instead select Alternative 3a, because they felt it protects more gravel habitats.

Response: While Habitat Alternative 10b is an industry-developed alternative, it was subjected to the same environmental analysis as all the other closed area alternatives. The analysis shows that it ranked relatively high for

EFH protection and protection of other ecosystem properties when compared to the other closed area alternatives, including Habitat Alternative 3a, and that it represents the most practicable alternative. Habitat Alternative 10b was shown to be the most effective in protecting EFH that is highly vulnerable to the effects of bottom-tending mobile gear (section 5.3.8.3.2.2 of Amendment 13). As stated in Response 33, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH, not just the EFH of one species or life stage. Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibits the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH, (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages, is afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition, because the EFH protections are more effective than most of the other alternatives, and since this alternative has a relatively low economic cost to the fishing industry and port communities, Alternative 10b was shown to be the most practicable alternative to implement (Amendment 13 Section 5.3.10.3.4.10). In comparison, Alternative 3a, while providing a good degree of EFH protection, has high economic costs to the industry and disproportional community impacts. Alternative 3a was shown not to be practicable. The Magnuson-Stevens Act and EFH Final Rule require that actions to minimize the adverse effects of fishing on EFH be practicable. The practicability analysis considered the costs and benefits of the alternative on EFH, associated fisheries, and the Nation, as required by § 600.815(a)(2)(iii) and is consistent with National Standard 7.

Comment 39: Three commenters felt that the habitat closed areas protect mainly sand habitats instead of more valuable complex gravel habitats.

Response: Amendment 13 concludes that complex hard bottom (gravel) habitats are vulnerable to the adverse effects of bottom-tending mobile gear. However, Amendment 13 also shows that hard bottom sediments are not the only vulnerable EFH. The EFH for other species described as sand, soft sediments, silt, mud, and soft mud have also been determined to be highly vulnerable to the adverse effects of bottom-tending mobile gear (Table 161 of Amendment 13). Amendment 13 provides a balanced approach to EFH protection and protection of these substrate types.

The substrate analysis provided in Amendment 13 (section 5.3.8.3.1.2) shows the percent composition within each closed area based upon six sediment characteristics: Bedrock, gravel, gravelly sand, sand, muddy sand, and mud. Table 141 in Amendment 13 shows that, out of the 83,550 sq nm included in the Northwest Atlantic analysis area, 53,856 sq nm are composed of sand/gravelly sand, representing 64 percent of the entire area. Less than 1 percent of the Northwest Atlantic analysis area has been mapped as gravel or bedrock. These complex hard bottom areas of bedrock and gravel are not uniformly distributed (*see* Figures 160 and 162 of Amendment 13) and are difficult to encompass in closed areas without including large amounts of sand and other substrates. The closed area alternatives analyzed in Amendment 13 encompass anywhere from 3 to 32 percent of the mapped gravel areas. Habitat Alternative 10b includes all substrate types representing vulnerable EFH. Compared to the Northwest Atlantic analysis area, Alternative 10b includes 2 percent of the bedrock, 19 percent of the gravel, 11 percent of the gravelly sand, 3 percent of the sand, 2 percent of the muddy sand, and 2 percent of the mud (Table 141 of Amendment 13).

Comment 40: One commenter felt that NMFS should implement Habitat Alternative 8d in Amendment 13, which prohibits the use of rock hopper and roller gear.

Response: The analysis in Amendment 13 is inconclusive as to whether this alternative provides additional habitat protections, and as to the costs to the industry (section 5.3.10.3.4.8) in implementing this alternative. Direct benefits to EFH under this alternative would have to be demonstrated and better understood before it could be adopted. NMFS has concluded that implementation of habitat closed areas (Alternative 10b) is a more effective way of protecting vulnerable EFH based on best available science.

Comment 41: One commenter was concerned that Amendment 13 contains no measures specifically designed to protect deep water corals.

Response: Amendment 13 does not contain any measures specifically designed to protect deep-water corals because the use of bottom-tending mobile gear associated with the NE multispecies fisheries has not been identified as having an adverse effect on deep-water corals. NE multispecies fisheries are not typically conducted in these deep waters (section 9.3.1.2.3.4.4 of Amendment 13).

Comment 42: An industry group strongly opposed the measures in Amendment 13 and the proposed rule that would exclusively preclude access by bottom-tending mobile gear to specific geographical areas of the fishing grounds. The commenter felt this represents an unacceptably disproportionate measure and inequitable allocation of access to the groundfish resource among sectors of the fishery.

Response: The Magnuson-Stevens Act and the EFH Final Rule require that the adverse effects of fishing on EFH be minimized to the extent practicable. An evaluation of the potential adverse effects of each fishing activity on EFH was conducted as part of Amendment 13 (section 9.3.1). This evaluation concluded that bottom-tending mobile gears can have a potential adverse effect on the EFH of 42 species/life stages within the geographic bounds of the NE multispecies fishery. Amendment 13 must minimize, to the extent practicable, those adverse effects on EFH that are occurring as a direct result of the use of bottom-tending mobile gears in that fishery. Habitat closed areas, or areas where bottom-tending mobile gear are prohibited, are the most effective way of minimizing those adverse effects. The areas selected as habitat closures (Habitat Alternative 10b) are 81 percent within the existing groundfish mortality closures where the harvest of groundfish is currently prohibited. The practicability analysis (section 5.3.10.3.4.10) shows that Habitat Alternative 10b results in the least economic cost to the industry (except for Habitat Alternative 6). In addition, this alternative provides the most effective protection to EFH, making Habitat Alternative 10b the most practicable alternative to implement. Alternatives that provided equally as much protection to EFH, but that would be more costly to the industry, were determined not to be practicable and, therefore, are not being implemented.

Comment 43: One commenter suggested that the final rule make it clear that EFH closures are frameworkable.

Response: The 1998 EFH Omnibus Amendment added frameworkable actions for the conservation and protection of EFH, which includes changes to the boundaries of EFH and HAPC designations, gear restrictions, area closures, and establishment of special management areas or zones. In

addition, this final rule includes gear requirements or gear changes in order to reduce impacts on EFH.

Comment 44: One commenter expressed support for exclusion of trawlers from sensitive habitats.

Response: Although the scope and exact meaning of the term ''sensitive'' is unclear, Amendment 13 does address the concept being supported by the commenter. Specifically, Amendment 13 and this final rule implement a series of habitat closed areas (Habitat Alternative 10b) as level 3 closures (closed to all bottom-tending mobile gear) to protect EFH that is vulnerable to the effects of bottom-tending mobile gear.

Comment 45: Three commenters did not support the default measures that will make further reductions to fishing mortality in 2006 and 2009, unless certain criteria are met. One commenter believed that the default measures are not consistent with National Standard 6, another commented that the proposed measures were not approved by the Council, and a third was concerned that the impacts of the default measures were not adequately analyzed.

Response: The default management measures were developed because the phased and adaptive rebuilding strategies implemented by Amendment 13 require future reductions in fishing mortality beyond the levels of fishing mortality reductions that will be implemented in 2004. Both the phased and adaptive rebuilding approaches use a strategy where a higher rate of fishing mortality (landings and discards) are permitted during the initial years of the rebuilding program, but lower fishing mortality rates are therefore required in subsequent years in order to rebuild to the appropriate level (Bmsy) within the required timeframe.

The default criteria were developed because it is possible that, at the time the default measures are scheduled to be implemented (2006 and 2009), the stock status situation will have improved such that the scheduled default mortality reductions (*i.e.*, management restrictions) will not be necessary. The goal of the default criteria is to implement measures of success and have a relatively swift means to avoid the default measures if they are not necessary. More specifically, if in 2006 the stock assessment indicates that either the fishing mortality rates and/or the stock sizes are more favorable than currently predicted, and the default criteria are met, the default management measures would not need to be implemented. Full regulatory action would not be necessary in order to prevent the default management measures from being implemented, and therefore, both time and work would be saved. If however, there were no default criteria in Amendment 13, and the situation is favorable at the time the default measures are scheduled to be implemented, the Council would have to develop, and NMFS would have to implement new regulations to prevent the default measures from being implemented.

The default measures and criteria are consistent with National Standard 6, which requires ''Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.'' These default criteria are specifically designed to allow for the contingency that the default measures are not necessary.

With respect to the commenter's concern about the adoption and analysis of the default measures, the Council approved the default measures at its meeting on November 6, 2003, and both the default measures and the default criteria are included and analyzed in Amendment 13. The amount of DAS reductions specified by the default measures is proportional to the percentage reduction in fishing mortality necessary for the targeted stocks, and was calculated by the Plan Development Team based upon the analyses of DAS reductions associated with Alternative 1B, in the DSEIS. The full schedule of DAS reductions was not evaluated because the area closure model used to evaluate the alternatives is not a dynamic model. Applying the area closure model to the 2006 and 2009 DAS reductions would have misrepresented the impacts, so it was not done.

Comment 46: Four commenters noted that the criteria in the proposed rule that specify the conditions under which the default management measures would not be implemented, which are contained in 50 CFR 648.82(d)(4), are inconsistent with Amendment 13 and Council intent. One commenter stated that the default criteria should be different for the 2006 and the 2009, and that the criteria should only contain references to fishing mortality.

Response: NMFS agrees that the criteria in the proposed rule do not completely reflect those proposed in Amendment 13. NMFS abridged the criteria in the proposed rule in an attempt to make them more succinct, but will modify the criteria in the final rule in order to more precisely reflect the intent of those listed in Amendment 13. NMFS disagrees that the 2006 and 2009 default criteria should be different, and disagrees that the criteria should include only references to fishing mortality. As described in the response to comment number 45, the default criteria are intended to describe potential conditions under which the default measures would not be necessary. If the stock is rebuilding well and existing management measures are achieving the required fishing mortality rate (or the stocks are not overfished), additional management measures to further reduce the fishing mortality would not be necessary.

Comment 47: One commenter felt that the amendment fails to address potential impacts to the infrastructure of ports.

Response: The economic analysis in Amendment 13 makes it possible to identify economic impacts on specific industrial sectors on a regional and subregional level. However, data were not available on fishing and fishing-related infrastructure, either in terms of physical features or business entities at a port level. The aggregation of data by region makes it difficult to trace impacts to specific ports within a specific region. Furthermore, defined industrial sectors contain aggregations or combinations of distinct businesses based on the primary product. Thus, while seafood processing is identified as a distinct sector, a distributor of commercial fishing gear would be included in a wholesale trade sector; along with a myriad of other wholesalers, most of which have nothing to do with fishing. Similarly, a trucking company that specializes in seafood would be grouped in with other trucking companies so the impact on the one or more businesses that transport seafood could not be identified.

Comment 48: One commenter noted that the analysis of impacts on vessels is incomplete due to a lack of comprehensive data on the fleet, most notably costs.

Response: NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action, but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions, and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in Amendment 13.

Comment 49: One commenter stated that the amendment does not address community impacts beyond vessels.

Response: Amendment 13 does provide information on revenue impacts on vessels with homeports from selected ports (*i.e.*, the port groups identified in the Affected Human Environment as being primary groundfish ports) and provides more aggregated regional impacts for sub-regions that contain multiple ports. The commenter is correct in the sense that neither of these analyses provide detailed information at a community level. Data were available, and analyses prepared, that would have made it possible to report revenue changes at a port-level. Such analyses have been a staple of economic analyses prepared for other management actions. However, without additional information on the composition of the shore-side economies of each affected community, merely reporting revenue changes by port provides only limited information on community impacts. Reporting impacts at a larger, sub-regional level permits full exposition of directly and indirectly affected economic sectors, but does so at the expense of losing specificity at the community level. Future reporting of management impacts would provide more information at a community level if both port-level revenue changes and sub-regional impacts on coastal economies are developed. More detailed community impact assessments will require systematic data collection, as well as additional research to identify the key components of community impacts.

Comment 50: The Council's social science advisory committee expressed concern about the adequacy of social and economic analysis in Amendment 13.

Response: Adequacy addresses whether the analyses provided for Amendment 13 were based on the best available data and whether these data were used in a manner consistent with professional standards. The panel of experts that reviewed the social and economic analyses concluded that they were adequate both in terms of the use of available data and the choice of the analytical methods applied to evaluate the impacts of specific management decisions.

Comment 51: A total of four commenters did not support the definitions of gear required for vessels fishing in the U.S./Canada Area. Some suggested minor revisions to the haddock separator trawl, as well as alternative definitions to the flatfish net, that would more closely resemble nets used in experimental research within the area. All commenters indicated that the flatfish net, as defined in the proposed rule, was impracticable.

Response: NMFS has made the necessary changes to the haddock separator trawl measure in this final rule. The definition has been changed to require that the mesh in the separator panel be composed of 6-inch (15.2-cm) diamond mesh, rather than 6.5-inch (16.5-cm) square or diamond mesh. This mesh would maintain consistency with the regulations at § 648.80(a)(4) and would minimize the retention of cod in the upper portion of the net compared to square mesh. Little guidance was provided in Amendment 13 defining flatfish gear. Accordingly, the proposed flatfish net was defined using available scientific research and consultations with gear experts. NMFS maintains that the proposed flatfish net definition would reduce cod bycatch while allowing vessels to target flatfish. Based upon suggestions from the public and additional available research, NMFS has included an alternative flatfish net definition that more closely resembles nets used in experimental research within the US/Canada Management Area.

Comment 52: A total of 11 commenters stated that management measures implemented by Amendment 13 will fail to achieve the desired fishing mortality rates. Their principal concerns are that categorization of DAS into A, B, and C days will not reduce DAS fished, that the overall DAS allocation is excessive and will not end overfishing, and the B and C DAS categories will increase opportunity in the fishery. Two of these commenters stated that the analysis of fishing mortality includes A DAS only and, therefore, fails to account for all sources of fishing mortality. One commenter stated that the stocks of GOM cod, white hake, and witch flounder will not meet the mortality goals. One commenter believes that the rules do not serve the public interest, but instead serve the commercial fishing industry because they are too lenient.

Response: Category A DAS are the principal effort control mechanism in the FMP, that, in combination with the other management measures (*e.g.*, closed areas, gear restrictions, and trip limits), will reduce the fishing mortality in the fishery in order to rebuild the groundfish stocks. However, because DAS are a non-specific management tool, they limit fishing effort on both overfished stocks and those stocks that are not overfished. The concept of Category B DAS was developed in order to address the fact that non-specific cuts in DAS, based upon the most severely depleted stocks, unnecessarily limits the ability of fishers to fish for stocks that are not overfished. The purpose of allocating Category B DAS is to provide limited potential to target stocks that are not overfished.

Category C DAS may not be used upon implementation of Amendment 13, and their future use will depend upon both the rebuilding of stocks and capacity of the fishery.

Upon implementation of Amendment 13, the only DAS that may be used in the fishery unrestricted are Category A DAS. Table 81 in Amendment 13 indicates that the total number of DAS used will be decreased by between 39 and 50 percent when compared with the no action alternative (depending upon the rate of DAS use). Such a decrease in DAS use does not represent an increase in fishing opportunity. Table 81 also provides a summary of the anticipated fishing mortality reductions that the management measures will achieve, based upon the allocation of A DAS in combination with other management measures, and assuming 3rates of DAS use. With few exceptions, the calculations indicate that the management measures are sufficient to achieve the necessary reductions in fishing mortality.

Based upon the information contained in Table 81, the commenter's concern about the achievement of the mortality goals for the stocks of GOM cod and witch flounder (two of the ''exceptions'' noted above) are justified, because the table indicates that the expected reduction in fishing mortality may be less than the needed reduction in fishing mortality for these stocks. NMFS' determination that the management measures have been demonstrated to be sufficient to meet the mortality objectives is based on both Table 81, and other information contained in Amendment 13. The pertinent information in Amendment 13 includes not only the results of the data analysis, but also the limitation of the model. According to Section 5.1.1, the closed area model, the principal analytical component of the fishing mortality calculations, has the following limitations: ''The model is a simulation of behavioral responses to changes in fishery regulations. It should not be interpreted as a precise calculation of future fishing mortality. While the model output results in apparently precise numerical estimates, it is better to interpret these as broad indicators of relative changes, rather than as precise prediction of mortality impacts. Small percentage changes, for example, should be viewed as less likely relative outcomes than large percentage changes. For stocks where the Council is implementing measures to make large reductions in fishing mortality, it

should be clear that the results of the measures will have to be carefully monitored to make sure the objectives are achieved. The model may not capture the exact response of fishermen to the regulations and as a result may over or under estimate the realized impacts.'' In light of the limitations of the model, the determination of the sufficiency of the rebuilding program should not be based solely upon small percentage differences between the desired and the achieved mortality reductions in stocks such as GOM cod. With respect to witch flounder, the management measures achieve approximately 75 percent of the necessary mortality reductions. If necessary, the default measures in 2006 will further reduce fishing mortality. NMFS will carefully monitor the results of the management measures through daily dealer reporting, and other means to ensure that the model did not overestimate the predicted impacts.

In contrast to Category A DAS, Category B DAS may only be used in approved SAPs upon implementation of Amendment 13. Amendment 13 provides for an allocation of B regular and B reserve DAS in order to allow limited opportunity in SAPs, and enable the Council to develop additional opportunities to utilize B DAS. Only two SAPs are being approved in Amendment 13, both of which are projected to have insignificant impacts on species of concern. NMFS agrees that the analysis of fishing mortality does not include B DAS in a global way, and that B DAS represent an additional source of fishing mortality. However, NMFS disagrees that the allocation of B DAS, their use in SAPs, and their potential use outside SAPs, necessarily mean that the fishing mortality on stocks of concern will be excessive. Amendment 13 demonstrates that the SAPs implemented by Amendment 13 will not undermine the fishing mortality objectives, based upon the status of the stocks that will be harvested and the restrictions to strictly limit bycatch of species of concern. Approval by NMFS of additional opportunities to utilize B DAS, in addition to those opportunities provided by Amendment 13, will be contingent upon B DAS targeting appropriate stocks and the development of measures that carefully consider bycatch of species of concern.

Since only two SAPs, only one of which utilizes B DAS, are being approved in Amendment 13, with insignificant impact on species of concern, NMFS has determined that allocating B DAS is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

Comment 53: A total of 7 commenters did not agree with the various trip limits as proposed. One stated that low trip limits and inadequate gear restrictions promote discards. Two commenters stated that the GB cod trip limit is too high, creating an incentive to target cod. One commenter suggested that the GB cod trip limit mirror the GOM cod trip limit. One commenter stated that the 250-lb (113-kg) seasonal trip limit for yellowtail flounder in the SNE/MA RMA should be implemented on a year-round basis. One commenter supported possession limits for American plaice, white hake, and SNE/MA winter flounder. Finally, one commenter stated that the GOM cod trip limit should be reduced by 50 percent.

Response: NMFS agrees that trip limits may promote discards if set at a low level in relation to the amount of fish encountered, and discards may be exacerbated by non-selective gear. The cod and yellowtail trip limits are set at levels in order to optimize the effect on fishing mortality. The GB cod trip limit may be more successful in achieving this objective than the SNE/MA yellowtail flounder trip limit. The analysis in Amendment 13 indicates that the GB cod trip limit is set at a level that minimizes the potential for regulatory discards, as well as reduces fishing mortality. The reduction of the trip limit from 2,000 lb (907 kg) per DAS to 1,000 lb (454 kg) per DAS decreases the incentive to target GB cod. With respect to GOM cod, NMFS disagrees that the trip limit should be reduced. The higher trip limit for GOM cod is designed to reduce bycatch during the period that cod aggregate for spawning. The analysis concludes that the change in trip limit to 800 lb (363 kg) per DAS will significantly reduce the ratio of fish discarded to fish kept, without jeopardizing mortality goals. Imposition of the SNE/MA yellowtail flounder trip limits will likely increase discards when compared with the no action alternative; however, this is justified given the low biomass of the stock and the fact that overall mortality on this stock should be significantly reduced compared to the no action alternative. The fact that the SNE/MA yellowtail flounder trip limit varies on a seasonal basis (250 lb (113 kg) per trip to 750 lb (340 kg) per trip) may mitigate the amount of discarding by limiting fishing on aggregations of flounder. Imposition of the 250 lb (113 kg) trip limit for the entire year would increase discards. In the future, as the stock rebuilds, this trip limit should be raised. The Council chose not to implement trip limits in order to reduce fishing mortality for American plaice, white hake, and SNE/MA winter flounder, but instead decided to rely solely on the combined effects of DAS reductions and closed areas and gear (*see* Response to Comment 83 for further discussion). The continuation of a least 5 percent observer coverage on groundfish vessels should provide adequate monitoring of whether the trip limits are effective regarding reducing fishing mortality and bycatch. If data indicate that the trip limits are not effective, the Council can recommend necessary adjustments.

Comment 54: One commenter objected to the fact that the alternative being implemented was developed relatively late in the regulatory process.

Response: NMFS agrees that Alternative 5 was developed after the other 4 alternatives were developed, but believes that the development of Amendment 13 was consistent with applicable laws. The selected alternative was based largely on components that were contained in the DSEIS and discussed during the public hearing process, and the full alternative is contained in Amendment 13. Furthermore, pursuant to the Magnuson-Stevens Act, the public had an additional 60-day comment period on Amendment 13 and all of the alternatives presented, including the selected alternative. Finally, the proposed rule allowed for a 30-day public comment period on the proposed Amendment 13 measures. In view of the numerous opportunities for comment, NMFS believes that the public was informed of, and could comment on each of the proposed alternatives in Amendment 13, including the selected alternative. All appropriate comments received on the Amendment, the NEPA document and the proposed rule have been evaluated by NMFS in order to make a decision whether to approve, disapprove or partially approve Amendment 13.

Comment 55: One commenter objected to the continuing use of ''rolling'' closure areas in the FMP because of the belief that a derby fishery is created when the closed areas are opened.

Response: The GOM Rolling Closure Areas provide important protection to spawning aggregations of the GOM cod stock. Although there may be the potential for a derby fishery upon opening of these areas, there are no data indicating that this has been a problem. In any event, the derby affect is likely limited in duration and scope. The impact of the rolling closure areas on GOM cod remains positive.

Comment 56: Three commenters did not support the restriction that DAS

carried over from the 2003 fishing year into the 2004 fishing year will be available only as Category B DAS, due to the belief that this creates a safety concern.

Response: The classification of fishing year 2003 carry-over DAS as Category B DAS in fishing year 2004 does not represent a safety concern. Although this restriction may provide additional incentive for vessels to fish their DAS in the 2003 fishing year prior to implementation of Amendment 13, due to the different restrictions associated with a Category A DAS and a Category B DAS (as discussed in the response to comment number 52), the regulations do not require a vessel owner to make an unsafe decision regarding whether or not to fish on a particular day.

Comment 57: One commenter noted that the concept of B DAS are missing from Amendment 13.

Response: Amendment 13 explains the concept of B DAS in section 3.6.1.1. The final rule provides for an allocation of B DAS (both Regular and Reserve), and implements, in a limited fashion, opportunity for their use within SAPs, as well as some associated restrictions (*e.g.*, carry over, leasing of, *etc*.). Although Amendment 13 describes the concept of B DAS, and anticipates the possible future use of Regular B DAS outside of an approved SAP, the amendment only partially describes the conditions under which the Reserve B DAS may be used. The final rule, therefore, does not include the restrictions associated with Regular B DAS that are discussed in the amendment. The Council is currently developing such restrictions through a framework adjustment.

Comment 58: One commenter was opposed to inclusion of the 2001 fishing year in the calculation of the DAS baseline. The commenter believed that this results in a higher total number of DAS defined by the baseline, due to the inclusion of DAS that are not associated with any landings. One commenter supported the inclusion of the 2001 fishing year in the DAS baseline calculation for the following reasons: (1) Allows all fishing effort predating the Settlement Agreement to be treated fairly; (2) broadens the total qualified pool, which is reduced by the minimum landing requirement associated with the baseline DAS allocation; and (3) yields the desirable economic result of higher DAS allocations to all qualified permit holders.

Response: The Amendment 13 proposed DAS baseline alternative was selected because it is the alternative that most fairly distributed DAS based on recent groundfish fishing activity. NMFS disagrees that inclusion of the 2001 fishing year results in a higher DAS baseline. Amendment 13 indicates that the selected baseline results in a lower total number of DAS than does the baseline alternative that does not include the 2001 fishing year. The selected alternative, which includes the 2001 fishing year, also includes a requirement that a qualifying year is one in which the vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies. NMFS agrees with the reasons stated in support of the baseline that includes the 2001 fishing year.

Comment 59: One commenter stated that Amendment 13 should include information on the closed area model.

Response: NMFS believes that Amendment 13 provides adequate information on the closed area model. The closed area model, which was utilized to estimate the biological impacts of the closed areas, trip limits, and DAS reductions, is described in Section 5.1.1. of Amendment 13. This section describes the inputs to the model, its weaknesses, its advantages, and well as advice to the reader regarding interpretation of the results of the model (*see* Response to Comment 52). The model itself is an analytical computer program that has been discussed in public fora, and is not appropriate for inclusion in Amendment 13.

Comment 60: One commenter suggested that the GB Hook Gear Cod Trip Limit Program be disapproved because it adds uncertainty to the management regime, is incomplete, and difficult to enforce.

Response: NMFS has disapproved this program as further described in the preamble of this final rule under the section called ''Disapproved Measures.''

Comment 61: One commenter stated that NMFS should reconsider Amendment 13 if scientific information becomes available that indicates the stocks are in better shape. One commenter supported the biennial adjustment process described in the amendment.

Response: Pursuant to the Magnuson-Stevens Act, conservation and management measures established for the Northeast groundfish FMP should be based on the best available scientific information available. The process outlined in the NE multispecies regulations under § 648.90 will be the method utilized to incorporate new information into the FMP. The biennial adjustment extends the duration of time between each required periodic review and adjustment, but does not limit the ability of the Council to develop management measures at any time necessary.

Comment 62: Two commenters expressed support for the biological reference points. One commenter opposed setting the biomass threshold at 50 percent of Bmsy and thought the appropriate level should be 25 percent of Bmsy. One commenter believes that, for certain stocks (*e.g.*, Acadian redfish), the biomass threshold should be set at greater than 50 percent of Bmsy. One commenter stated that the biological reference points should not be modified through framework action.

Response: NMFS believes that the amendment sets the biological reference points (status determination criteria) at appropriate values, based upon the National Standard guidelines (NSGs) and the best available scientific information. The NSGs require that the biomass threshold be set at no lower than 50 percent of Bmsy, therefore, setting the threshold at 25 percent of Bmsy would be inconsistent with the NSGs. Although the National Standard guidelines allow for the biomass threshold to be set at a level greater than 50 percent of Bmsy based upon the biological characteristics of a stock, the NEFSC has certified that the Amendment 13 overfishing definitions comply with the National Standard 1 Guidelines. With regard to the process of making changes to the status determination criteria, Amendment 13 differentiates between the process of making changes to the parameters, and the process of making changes to the values of such parameters. Amendment 13 notes that it is the Council's responsibility to recommend status determination criteria, and states that changes to the parameters require Council action, whereas changes to the values do not. Finally, status determination criteria may be adjusted through the use of a framework so that the best available science can be incorporated into the FMP in a timely manner. This process will ensure that NMFS is satisfying its Magnuson-Stevens Act mandates, specifically, National Standard 2.

Comment 63: One commenter did not support the sector allocation requirement that allocations of TAC be based upon the catch history during a specific 5 year period, because the requirement would not allow for development of a sector if vessels did not have recent catch history. Another commenter did not support the approval of sectors unless the sectors are subject to a hard TAC.

Response: NMFS agrees that, under the sector regulations, those vessels without recent fishing history would not

be able to form a sector. This restriction is consistent with the Goals and Objectives of Amendment 13 (Goal 2): ''Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fleet.'' Allowing vessels that have not been active in the fishery recently may have the effect of increasing fishing capacity, which would be inconsistent with this goal. As NE multispecies stocks rebuild, the Council may consider removing such restrictions on sector allocations. NMFS agrees that the amendment specifies allocation of a hard TAC or DAS to sectors.

Comment 64: Three commenters supported the GB Cod Hook Sector allocation. Two of these commenters believe that participants in the GB Cod Hook Sector should not be regulated by many of the requirements of the FMP, and that the final rule should allow the Regional Administrator to waive specific measures for sector vessels. One commenter stated that the reference in the preamble to the proposed rule regarding the 5-year enrollment period in the GB Cod Hook Sector was incorrect. One commenter stated that the cod TAC for the GB Cod Hook Sector should be allocated based upon an amount of GB cod that includes the Canadian share of the stock. One commenter stated that the DAS for sector vessels should be considered fully utilized (in the event that the sector did not fish under the DAS system).

Response: Amendment 13 discusses the potential for a sector to be exempt from specific regulations that would still apply to non-sector vessels and that the Regional Administrator should have the authority to exempt sectors from specific regulations, if the sector's Operating Plan justifies such exemption and the regulation being exempted is not necessary for the achievement of FMP objectives in light of sector measures. The final rule is corrected to reflect this authority. NMFS will consider granting such exemptions through the procedure defined under § 648.87(d), that describes the process for approval of a sector by the Regional Administrator. The approval process includes solicitation of public comment and consultation with the Council. With regard to the requirement that participating vessels stay in the sector until the end of the five year period, NMFS agrees with the commenter that this requirement in the preamble of the proposed rule is incorrect and removes this language from the preamble. Although Amendment 13 includes a requirement to remain in a sector for the duration of a particular fishing year, the amendment does not discuss the requirement to participate for a five year period. NMFS disagrees that the cod TAC for the GB Cod Hook Sector should be based upon a total amount of cod that includes the Canadian share. Allocation of the hook sector's GB cod TAC in the manner suggested by the commenter could result in allocating an amount of cod that exceeds the sector's historic share of the U.S. fishery, and would therefore be inconsistent with Council intent. Lastly, Amendment 13 did not include a provision that the DAS for vessels participating in a sector be considered fully used. The discussion of such a provision should be included in a sector's Operations Plan.

Comment 65: Two commenters stated that the Regional Administrator should have the authority to implement other restrictions at the time the default measures are scheduled to be implemented. One commenter believed that the Regional Administrator should have the authority to adjust management measures in the middle of the fishing year in order to decrease fishing mortality.

Response: Neither the Amendment nor the proposed rule included provisions to grant such authority to the Regional Administrator. Without specific criteria in Amendment 13 for making such adjustments, this final rule cannot provide this authority. The Council, however, may develop and recommend an adjustment to management measures at any time through the framework adjustment process.

Comment 66: One commenter stated that the final rule should contain the status determination criteria, including definitions of OY, as well as Table 10 from Amendment 13, (proposed rebuilding trajectories; fishing mortality rates for the rebuilding program).

Response: The Magnuson-Stevens Act and the National Standard Guidelines require that every fishery management plan contain certain components, such as an identification of OY and stock status determination criteria. However, there is no requirement that all of these items be codified by a regulation. NMFS typically does not include every measure in a fishery management plan or its amendments in codified regulations because it adds to the complexity, length, and costs of publication and such inclusion is not necessary for enforcement or compliance purposes. NMFS has included in this final rule regulatory language for all of the approved measures in Amendment 13 that require public compliance, as opposed to measures in the amendment that guide or constrain Council action.

Comment 67: One commenter supported the provision that allows vessels with VMS to opt out of the VMS program for a minimum period of 1 calendar month.

Response: NMFS agrees and is implementing that measure in this final rule.

Comment 68: One commenter suggested that NMFS disapprove the proposed removal of the FAAS from the regulations. The commenter stated that the FAAS was implemented to provide the Council and NMFS with the ability to quickly respond to seasonal and area bycatch problems in the groundfish fishery. Furthermore, the commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected.

Response: NMFS agrees with the commenter and disapproved the proposed removal of the FAAS, as explained in the preamble to this final rule under ''Disapproved Measures.'' NMFS will continue to seek ways to expedite implementation of regulatory actions.

Comment 69: One commenter requested clarification on whether the target TACs listed in Table 11 of Amendment 13 are in relation to the calendar year or fishing year.

Response: The targets TACs are for the calendar year. The preamble of this final rule has been revised to make this clear.

Comment 70: One commenter requested explanation on how the control rules will govern management measures.

Response: Section 3.1.8 of Amendment 13 explains how control rules will be applied to the FMP. The control rules are meant to be consistent with fishing mortality thresholds that define when overfishing is occurring.

Comment 71: One commenter was opposed to the implementation of any of the Amendment 13 SAPs, stating that there are no stocks that could support an increase in effort.

Response: NMFS has approved two Amendment 13 SAPs and disapproved two SAPs. Regarding the approved CA II Yellowtail Flounder SAP, the target species, GB yellowtail flounder, is currently not overfished, nor is overfishing occurring. Since the Amendment 13 DAS reductions are intended to reduce fishing mortality to appropriate levels for the stocks of greatest concern, additional effort directed on GB yellowtail flounder,

through the use of B DAS as well as steaming time deduction, is not likely to undermine the fishing mortality objectives for this stock. Furthermore, GB yellowtail flounder is one of the three shared stocks managed under the U.S./Canada Resource Sharing Understanding and, therefore, is subject to a hard TAC, *i.e.*, a quota specified for a stock, whereby, once attained, the possession limit would be zero. In addition, the Regional Administrator has authority to reduce the GB yellowtail flounder trip limit to ensure that this TAC is not exceeded. Should the TAC be exceeded, the overage would be deducted from the next fishing year's TAC. (For further information, see Comment 77 below.) Vessels electing to fish in the CA II Yellowtail Flounder SAP are required to fish with either a haddock separator trawl or flatfish net to mitigate bycatch of cod. In addition, a cod trip limit of 100 lb (45.4 kg) is proposed when fishing in this area to prevent vessels from circumventing the regulations.

The approved SNE/MA Winter Flounder SAP, which allows vessels directing on summer flounder to retain up to 200 lb (90.7 kg) of winter flounder is intended as a measure to reduce bycatch. Currently, vessels in the summer flounder fishery that catch small amounts of winter flounder are required to discard this species at sea when they are fishing outside of the groundfish DAS program. The SNE/MA Winter Flounder SAP allows these vessels to keep the winter flounder that they would normally be discarding. The fishing mortality on the SNE/MA winter flounder stock will, consequently, not likely be affected, since overall effort is not expected to increase. Winter flounder that otherwise would have been discarded can, instead, be landed.

Comment 72: One commenter expressed support for the abbreviated SAP approval process.

Response: The proposed abbreviated SAP process has been disapproved, as explained in to the preamble of this final rule under ''Disapproved Measures.''

Comment 73: One commenter noted that there are no proposed SAPs in the near-shore waters of Maine and noted that small vessels from Maine would be unable to physically access the SAPs proposed in offshore waters.

Response: Although there are no Amendment 13 proposed SAPs within the near-shore waters of Maine, the Council may develop and recommend an inshore GOM SAP to NMFS through the framework adjustment process. Small vessels from Maine that are unable to physically access the CA II Yellowtail Flounder SAP may indirectly benefit from this approved SAP should larger vessels that fish Maine's inshore waters redirect their fishing efforts in the CA II Yellowtail Flounder SAP. Because SAPs are designed to target fishing on the healthiest stocks of groundfish, their locations necessarily must reflect the distributions of those stocks. As more stocks rebuild, there will be more opportunities for SAPs.

Comment 74: One commenter expressed opposition to the two trip per month restriction in the CA II Yellowtail Flounder SAP, stating that this would create a derby fishery and concentrate landings in the summer months when prices are low.

Response: The two-trip-per-month restriction is designed to avoid a derby fishery. In 2002, 117 vessels reported fishing for yellowtail flounder in the waters adjacent to CA II. If this same number of vessels participate in the CA II Yellowtail Flounder SAP, this fishery would be expected to last 4 to 6 weeks into its June through December season before the 320 maximum number of trips were taken. However, there are many new restrictions in the U.S./Canada Management Area where the CA II SAP resides (such as VMS, and reporting requirements, and gear restrictions) and it is, therefore, difficult to predict how many vessels will actually participate. However, the two-trip-per-month restriction in the CA II Yellowtail Flounder SAP should help avoid a derby fishery.

Comment 75: Two commenters suggested that the trip limits for stocks within the SAPs be under the Regional Administrator's authority to adjust.

Response: This final rule implements a maximum 30,000 lb (13,608 kg) yellowtail flounder trip limit for the CA II Yellowtail Flounder SAP and a restriction on retaining more than one-fifth of the daily GB cod possession limit specified for the Eastern U.S./Canada Area, which would equate to 100 lb (45.4 kg). In addition, because this SAP is located within the U.S./Canada Management Area, the Regional Administrator has the authority, under the regulations implementing the Understanding (§ 648.85(a)(3)(iv)(D)), to further adjust the trip limit to prevent over-harvesting or under-harvesting of the shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder. The regulations implementing the SNE/MA Winter Flounder SAP restrict vessels from landing more than 200-lb (90.7-kg) of winter flounder. Although the Regional Administrator does not have the authority to modify the 200 lb (90.7 kg) trip limit, there is little need for the Regional Administrator to have adjustment authority because the limit is already set very low.

Comment 76: One commenter noted that the cod trip limit within the SAPs needs to be clarified.

Response: In response to this comment, NMFS has modified the regulations under § 648.85(b)(3)(viii) to specify that the cod trip limit within the approved CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area, as intended in Amendment 13. Because the Eastern U.S./Canada Area trip limit is 500 lb (226.8 kg) of cod per DAS, the cod trip limit in the CA II Yellowtail Flounder SAP is 100 lb (45.4 kg), until such time that daily cod trip limit for the Eastern U.S./Canada Area is revised through another action.

Comment 77: One commenter opposed providing steaming time credit to and from the Eastern U.S./Canada Area, stating that it was unwarranted due to the proposed allowance of B DAS use within the proposed SAPs.

Response: Steaming time to and from the Eastern U.S./Canada Area, as well as the allowance of B DAS in this fishery, is provided as an incentive for vessels to fish on the relatively healthy stock of GB yellowtail flounder. Landings of yellowtail flounder have recently leveled of to approximately 3,000–4,000 mt. Because of the large effort reductions implemented through this final rule, landings of GB yellowtail flounder are expected to decline further from this level. However, because this stock is estimated to be able to support a harvest of approximately 12,000 mt, the steaming time incentive has been provided as a mechanism to allow vessels to redirect onto this stock, while removing effort directed at groundfish stocks of concern.

Comment 78: One commenter suggested that the CA II Yellowtail Flounder SAP should include hard TACs to control the catch.

Response: This final rule implements the U.S./Canada Resource Sharing Understanding, which incorporates the CA II Yellowtail Flounder SAP, including hard TACs for the three shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder.

Comment 79: One commenter stated that NMFS should control bycatch of non-groundfish species and account for mortality of these species within the SAPs.

Response: The Council and NMFS must consider minimizing bycatch for all non-targeted groundfish and non-groundfish species, to the extent

practicable, when developing and approving a SAP. NMFS recognizes that bycatch of skate, in particular, may be of concern in the CA II Yellowtail Flounder SAP; however, it is not clear that bycatch of skate will be any greater for vessels fishing in CA II than when they are fishing outside of this area. Overall, bycatch is likely to be greatly reduced by amendment 13 due to the large reductions in fishing mortality and the required gear modifications when fishing within the Eastern U.S./Canada Area, which incorporates the CA II Yellowtail Flounder SAP.

Comment 80: Three commenters opposed the CA II Haddock SAP, stating that cod and haddock are caught in equal amounts in this area, and that the document does not contain any information on bycatch for this SAP.

Response: NMFS agrees that the analysis for the CA II Haddock SAP is insufficient and has disapproved this SAP, as explained in the preamble to this final rule under ''Disapproved Measures.''

Comment 81: One commenter stated that NMFS should not rely on historical information to determine access for the CA II Yellowtail Flounder SAP because of its uncertainty.

Response: The Amendment 13 document analyzes this measure in light of the best scientific information available, including the most recently available observer data for both experimental trips within, and commercial fishing trips adjacent to, the southern portion of CA II, as well as preliminary information from the recent CA II yellowtail flounder experimental fishery conducted in September through December 2002. Therefore, this measure is consistent with National Standard 2, which requires all measures to be based on the best scientific information available.

Comment 82: One commenter stated that access to the CA I Haddock Hookgear SAP should be provided only to the GB Cod Hookgear Sector, and that the coordinates for this SAP should be those coordinates reflected in the experimental fishery that has been approved by NMFS.

Response: NMFS disapproved the CA I Haddock Hookgear SAP for the reasons stated in the preamble to this final rule under ''Disapproved Measures.'' In any case, NMFS does not have the authority to change the management measures proposed by the Council in Amendment 13. Bycatch

Comment 83: Approximately 3,230 commenters, consisting mostly of form comments stated that Amendment 13 should adopt enforceable measures to minimize bycatch and waste.

Response: National Standard 9 requires bycatch and bycatch mortality to be minimized to the extent practicable. NMFS has determined that bycatch and the unavoidable mortality of bycatch in the NE multispecies fishery are being addressed adequately and consistent with applicable law. The minimum mesh size restrictions, gillnet gear reductions, running DAS clock to account for cod overages, and the exempted fishery program are the primary bycatch reduction measures in the FMP. Other measures such as DAS reductions, and other gear modifications, such as the rockhopper gear restrictions in the GOM, also contribute to bycatch reduction. The exempted fishery program, implemented in Framework 9 and expanded in Amendment 7, virtually eliminated all fisheries in the GOM, GB, and SNE RMAs when fishing outside of the NE multispecies and scallop DAS programs, unless it can be determined that the fishery can operate with less than a 5 percent bycatch of regulated species. Amendment 13 contains several additional management measures that will likely reduce bycatch. These include: An increased reduction in fishing effort; mesh size increases; additional gillnet gear reductions; hookgear reductions that include a restriction on the number of allowable hooks; a requirement to fish with circle hooks only; and a prohibition on the use of de-hookers with less than 6-inch (15.2-cm) spacing between the fairlead rollers; an increase in the GOM cod daily trip limit; the allowance of 200 lb (90.7-kg) of winter flounder in the SNE/MA Winter Flounder SAP; an expansion of the exempted fisheries program; and the requirement to use either a flounder net or haddock separator trawl are designed to affect cod selectivity while fishing in the Eastern U.S./Canada Management Area. In light of the substantial reductions in fishing effort and consequent costs to fishermen resulting from Amendment 13, the Council and NMFS have determined that, on balance, the measures in the FMP, as amended by Amendment 13, have reduced bycatch and bycatch mortality to the extent practicable.

Comment 84: Four commenters fault Amendment 13 for not promoting selective fishing gear that is consistent with the groundfish trip limits.

Response: Because of the relatively low hard TAC specified for GB cod within the Eastern U.S./Canada Area, this final rule implements a 500-lb (226.8-kg) trip limit for GB cod when fishing in this area and requires that vessels fish with either a haddock separator net or a flatfish net; fishing gears are designed to reduce bycatch of cod. Although there are no specific gear requirements that would ensure that vessels do not exceed the GOM cod daily trip limit of 800 lb (362.9 kg), or the GB cod daily trip limit of 1,000 lb (453.6 kg), vessels would be allowed to retain an additional day's worth of fish, should they exceed the trip limit, provided the vessel operator does not call out of the DAS program until the additional time equating to this overage has elapsed (this is referred to as the ''running clock''). This measure is intended to reduce discards of cod. There are no selective fishing gears proposed for the SNE/MA yellowtail flounder trip limit; however, because some of the seasonal trip limits are so low (250 lb (113.4 kg) per trip), many vessels will likely choose to direct on other stocks, at least during the seasons with these very low trip limits.

Comment 85: One commenter stated that Amendment 13 does not contain an adequate assessment of bycatch, since it uses fishing year 2001 as the baseline for evaluating bycatch effects of the proposed measures, and that the proposed measures should be evaluated against a baseline of no fishing. The commenter further stated that fishing year 2002 provides the most recent and reliable bycatch data and those data should be incorporated into Amendment 13.

Response: All the proposed measures were evaluated based on a comparison to the no action alternative, *i.e.*, the management measures in place in 2001, prior to the Court-ordered measures implementing the Settlement Agreement (Interim Action). Amendment 13 uses bycatch information from the most recent completed assessments. Although additional bycatch information has been collected since the most recent assessments were completed (2002 fishing year), it has not been analyzed or reviewed through the stock assessment process and therefore is not considered the best scientific information available.

Comment 86: One commenter stated that there should be scheduled bycatch reviews required for all exempted fisheries.

Response: The regulations under the exempted fishery program (§ 648.80(a)(8)) provide for additions as well as deletions of exempted fisheries, should there be concern that an exempted fishery is jeopardizing fishing mortality objectives. In addition, should there be concern regarding bycatch in an exempted fishery, the Council, at any time, may consider developing a framework adjustment to address this.

Observers

Comment 87: Approximately 4,780 commenters, consisting mostly of form comments, stated that Amendment 13 should provide adequate observer coverage to monitor target and non-target species. Some of these commenters suggested that 10 percent coverage would be adequate; others suggested 20 percent coverage for all groundfish fisheries (including SAPs), with as much as 50 percent coverage for fisheries encountering protected species.

Response: NMFS intends to maintain its observer coverage in the groundfish fishery at a minimum level of 5 percent. NMFS has conducted an analysis of the relative precision of discard estimates using observer coverage and landings data for the year 2000 for all stocks of regulated species in the NE multispecies fishery. This analysis focused on vessels fishing under the NE multispecies DAS program. Based on this analysis, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. The criteria for statistical robustness include comparability with similar studies worldwide, consistency with Atlantic Coastal Cooperative Statistical Program (ACCSP) standards, and comparability with other variance components in the stock assessments. A 5-percent observer level represents a 5.6-fold increase in the number of trips observed in 2000. Additional coverage, although not required for statistical adequacy in the groundfish fishery, could be implemented if dedicated resources are available, *e.g.*, an allowance for 10-percent coverage as provided for in the Omnibus Bill for fishing year 2004. Additional coverage would exceed levels considered statistically adequate for the groundfish fishery, but may allow expanded coverage of other fisheries where it may not be possible to achieve a particular target coverage level but where some possibility of groundfish bycatch exists, *e.g.*, the Atlantic herring midwater fishery. It would also allow flexibility to cover some potentially new components of the fishery, such as the use of B DAS, at higher rates as part of a pilot program. The Northeast Fisheries Science Center receives separate funding annually to place observers on vessels in fisheries that have the potential to take protected species. This coverage is directed annually by staff of the Northeast Regional Office's Protected Resources Division to address species of concern. Coverage levels are determined by computing the sample size needed for a specific degree of precision in the estimate of take, not by percentage coverage.

For Fiscal Year (FY) 2004, NMFS intends to provide 10 percent level of observer coverage to estimate the amount and type of discards for the Northeast multispecies fishery as mandated by Congress in the FY 04 budget appropriation. As stated above, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. This 5 percent level of observer coverage will resume in FY 05 and beyond, absent a similar appropriation requiring a greater level of observer coverage.

Comment 88: Four commenters stated that there is no standard methodology to account for and minimize bycatch.

Response: In accordance with the Magnuson-Stevens Act, NMFS is developing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology (SBRM) for fisheries under the jurisdiction of the agency. Consistent with this protocol, the NE Multispecies FMP and Amendment 13 have measures in place that satisfy the elements of an SBRM being developed by NMFS. These include comprehensive reporting requirements on dealers and fishermen. In addition, Amendment 13 requires daily electronic dealer reporting when such a program is available. NMFS intends to implement such a program through a separate rulemaking anticipated to be in place on May 1, 2004. Amendment 13 also requires that, once a viable electronic system becomes available, vessels will be subject to electronic reporting on a trip-by-trip basis. As stated in the response to Comment 86, NMFS intends to maintain its observer coverage in the groundfish fishery at no less than 5 percent. This coverage will be provided through the appropriate statistical design for each of the major gear types used in the NE multispecies fishery and will be distributed throughout the geographic range of the fishery. For groundfish DAS vessels fishing within the proposed U.S./Canada Management Area, real-time information on bycatch for the GB stocks of cod, haddock, and yellowtail flounder will be corroborated through the observer program. Should funds become available, NMFS also intends to increase observer coverage on non-groundfish vessels to better assess bycatch of groundfish.

Comment 89: One commenter stated that NMFS should revise Amendment 13 to provide for a reasonable range of alternatives for adequate observer coverage.

Response: As the Amendment 13 document points out, the Council does not manage the observer program and, therefore, did not consider a range of alternatives for observer coverage in this program. NMFS has determined through statistical analysis what level of coverage is adequate, as explained in the response to Comment 86. This analysis also considered other levels of observer coverage.

DAS Transfers

Comment 90: Two commenters stated that they support the DAS Transfer Program because it will allow some vessels to survive.

Response: NMFS agrees and has approved this program.

Comment 91: Three commenters opposed the 40-percent conservation tax specified in the DAS Transfer Program, stating that it was excessive, provided little incentive to participate in the program, and that the program should have controls similar to the DAS Leasing Program. Two commenters believe that the requirement to surrender all permits is too punitive.

Response: The intent of the proposed DAS Transfer Program is to provide the fishing industry with greater economic opportunity and flexibility by allowing vessels to permanently transfer their DAS, albeit at a cost in the form of a conservation tax (*i.e.*, Category A and B DAS would be reduced by 40 percent and Category C DAS would be reduced by 90 percent). This ''tax'' is intended to provide a means to achieve some long-term reduction in fishing effort through the removal of active and inactive DAS from the groundfish fishery. Although the Council is currently considering modifying the conservation tax through a separate framework action, NMFS has determined that Amendment 13 sufficiently analyzes the conservation tax and has approved this measure.

U.S./Canada

Comment 92: Six commenters spoke in support of the Understanding, stating that this program will help mitigate the economic impacts of Amendment 13. One commenter specifically supported the gear requirements in the Eastern and Western U.S./Canada Areas.

Response: NMFS supports the Understanding, as it will allow the U.S. and Canada to better coordinate

management of the U.S./Canada shared stocks of cod, haddock, and yellowtail flounder on GB. Upon reviewing the Amendment 13 document and the Council's intent in adopting the gear requirements (haddock separator trawl and flatfish net) included in the Understanding, NMFS has modified the final rule such that vessels would be subject to the gear modifications only when fishing in the Eastern U.S./Canada Area. Additional information on this issue may be found in the Response to Comment 16.

Comment 93: One commenter opposed the use of hard TACs proposed for the U.S./Canada shared resources of cod, haddock, and yellowtail flounder, stating that hard TACs do not work.

Response: NMFS believes that the hard TACs proposed for the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder on GB are necessary to ensure compliance with the Understanding. Under the measures implementing the Understanding, groundfish DAS vessels fishing on a groundfish DAS within the U.S./Canada Management Areas are required to fish with a VMS and report their daily catches (both landings and discards) of cod, haddock, and yellowtail flounder. This real-time monitoring will provide timely information to make needed adjustments to ensure that these TACs are not exceeded.

Comment 94: One commenter requested that both the haddock separator trawl and the flatfish net be allowed on board when fishing in the U.S./Canada Management Areas.

Response: NMFS has modified the final rule to reflect this change.

Electronic Reporting

Comment 95: A total of 4,779 commenters, consisting mostly of form comments, supported daily electronic dealer reporting.

Response: NMFS has approved this measure and is currently developing a rule to implement the daily electronic dealer reporting requirement.

Comment 96: A total of 4,779 commenters, consisting mostly of form comments, supported a mandatory VMS requirement.

Response: Amendment 13 requires that groundfish DAS vessels that have opted to fish under a groundfish DAS in the U.S./Canada Management Area be required to fish with a VMS for the remainder of the fishing year, regardless of where they are fishing. This is anticipated to affect approximately 400 vessels, which makes up a large percentage of the groundfish DAS fleet. Implementing a mandatory VMS program for all groundfish vessels at this time was not considered as a management option in Amendment 13, largely because of the costs to smaller vessels. As costs come down for VMS units, NMFS and the Council intend to reconsider a universal VMS requirement.

Comment 97: Seven commenters either supported or opposed the DAS Leasing Program. Four commenters supported the program, with two suggesting extending the program for a total of 5 years, instead of the proposed 2 year duration. Supporters indicated that the program would enable some vessels to continue to fish, maintain shoreside infrastructure, and prevent increases in fishing effort and large-scale effort shifts. One supporter of the program commented that the 120-day block out of the fishery requirement for day gillnet vessels prevents these vessels from participating in the program. One commenter opposed the program, stating that there was insufficient analysis of the impacts of the program on fishing mortality. Three commenters suggested that NMFS should disapprove the program if it results in increased DAS use rates and prevents the attainment of mortality goals. Finally, three commenters suggested implementing a leasing conservation tax, while an additional commenter suggested that NMFS closely monitor the leasing program for consolidation of effort.

Response: The DAS Leasing Program will enable some vessels to continue fishing, despite reductions in allocated DAS, as well as help maintain shoreside infrastructure by ensuring a continuous supply of groundfish. NMFS also agrees that the DAS Leasing Program may increase the use rate of DAS. The allocation of A DAS took this fact into consideration. The DAS Leasing Program is one of many factors in the Amendment that may either increase or decrease the DAS use rate. The Amendment 13 analysis assumes that the rate of DAS use will increase over recent levels; however, it is not possible to determine precisely the affect of individual management measures or programs on the rate of use of DAS. NMFS agrees with commenters that support a 2-year duration of the program. Reevaluation of the effects of the DAS Leasing Program on fishing mortality and industry consolidation in 2005 will allow the Council to propose changes, as necessary, to address concerns and maintain the rebuilding schedule. Amendment 13 does not change the regulations governing Day gillnet vessels. While the 120 DAS block requirements limit the time available to participate in the DAS Leasing Program, these regulations do not prohibit participation in the program. Amendment 13 does not contain a DAS leasing tax. However, the Council is considering such a tax in Framework Adjustment 40.

Comment 98: Two commenters supported the proposed size restrictions of lessee vessels, with one commenter preferring a horsepower conversion factor proposed in the April 24, 2003, proposed emergency rule (68 FR 20096) instead of the upgrade provisions proposed under Amendment 13.

Response: The size restrictions for lessee vessels are intended to ensure that any increase in the DAS use rate resulting from a leasing program will not also result in an increase in fishing capacity. These size restrictions are consistent with the vessel upgrade provisions specified at § 648.4. Therefore, the size restrictions maintain fishing capacity within the limits assessed in Amendment 13. The horsepower conversion factor preferred by one commenter and specified in the proposed emergency rule was withdrawn on July 14, 2003 (68 FR 41549) based upon public comments.

Comment 99: Two commenters opposed the proposed method for assigning DAS leasing history. One commenter suggested that the DAS use and landings history should be assigned as determined by the lease participants, while the other commenter suggested that both the DAS use and the landings history should accrue to the lessor.

Response: The attribution of DAS use and landings history is necessary to account for DAS usage and landings and is consistent with the provisions governing DAS use and landings outside of the DAS Leasing Program. This method is also consistent with current data tracking methods and more accurately reflects vessel activity within the program. Further, at this time, the NMFS data tracking programs are not capable of assigning DAS use and landings history based upon an agreement between lease participants. Because the method for accounting for DAS is based on a presumption of what information the Council may require later, the Council may recommend other accounting methods in future actions, provided such methods are adequately justified and consistent with applicable law.

Comment 100: Two commenters addressed the ability to lease DAS from permits held in Confirmation of Permit History (CPH). One commenter indicated there is no justification to disallow the leasing of CPH DAS, while the other commenter supported the

proposed prohibition of leasing CPH DAS.

Response: Restrictions prohibiting permits held in CPH from leasing DAS were proposed to reduce the amount of latent effort entering the fishery resulting from the leasing program. Currently, there are 68 permits held in CPH that would qualify for a total of 1,482 Category A DAS under Amendment 13. Under the DAS Leasing Program, these DAS will be unavailable for leasing and represent a reduction in potential effort increases. However, these DAS may be leased if permits are taken out of CPH and placed upon another vessel. The DAS associated with such vessels were included in the analysis of biological impacts in Amendment 13. This is consistent with the CPH regulations specified at § 648.4(a)(1)(i)(J).

Comment 101: One commenter suggested that the procedure for correcting a DAS baseline specified in the regulations should include a reference to consideration of requests for DAS baseline corrections that result from participation in a cooperative research project.

Response: NMFS disagrees that additional regulatory language is required. The procedure to correct an incorrect DAS baseline addresses a separate issue than the Council's policy statement on the loss of DAS due to participation in a cooperative research project. The Regional Administrator has the authority to implement the Council's policy if appropriate.

Comment 102: One commenter suggested additional regulatory text that would clarify the time period when DAS leasing applicants could submit applications for the following fishing year, and suggested that NMFS accept applications as of March 15.

Response: NMFS has clarified the pertinent regulations in this final rule, although NMFS did not restrict the time period that an applicant may submit an application for the following fishing year.

Comment 103: One commenter supported defining OY as 75 percent of Fmsy, but was concerned that the management measures allow F to exceed OY. The commenter questioned how such measures comply with the requirements of the Magnuson-Stevens Act that OY be achieved on a continuing basis.

Response: The Magnuson-Stevens Act defines OY as the yield from a fishery that provides the greatest overall benefit to Nation, is prescribed based on MSY and, for an overfished fishery, provides for rebuilding to a level consistent with producing MSY. The management measures contained in Amendment 13 have been designed to meet all these requirements and, in NMFS's opinion, have at least a 50 percent probability of doing so.

Comment 104: An environmental organization expressed concern regarding bycatch of migratory striped bass in the groundfish fishery, particularly by trawl vessels, and requested that the final rule implementing Amendment 13 take action to reduce seasonal bycatch of striped bass. The commenter also requested that at-sea observer coverage be used to closely monitor and report striped bass bycatch.

Response: The measures to reduce bycatch in the groundfish fishery that were proposed in Amendment 13 were approved; NMFS does not have the authority to implement measures that were not proposed in Amendment 13 in this final rule. An initial examination of information on striped bass bycatch in the NMFS at-sea observer database indicates that, while striped bass bycatch in the groundfish trawl fishery has been observed, significant catches appear to be infrequent and limited in time and area. NMFS will continue to collect and analyze data on all species caught in the groundfish fishery through the at-sea observer program, which will provide information on bycatch that could be used by the Council to develop future measures to further reduce bycatch.

Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of several management measures proposed in Amendment 13. Other changes are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 648.2, definitions are added for: ''Circle hook,'' ''Stocks targeted by the default measures,'' ''Transboundary Management Guidance Committee,'' ''Transboundary Resource Advisory Committee,'' and ''U.S./Canada Steering Committee,'' to clarify these terms in the regulations.

In § 648.4(a)(1)(i)(A)(*2*), the date until which reported landings to qualify for the limited access Handgear A permit will be accepted is corrected to be consistent with the date described in the preamble of the proposed rule.

In § 648.4, paragraph (a)(1)(i)(A)(*3*) is added to further define the application criteria for the limited access Handgear A permit.

In § 648.4, paragraph (a)(1)(ii) is added to further define what types of vessels may qualify for open access multispecies, hand gear or charter/party permits.

In § 648.4, paragraph (c)(2)(iii)(B) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.9, paragraph (c)(1)(ii) is revised to clarify that double polling of the VMS unit for groundfish DAS vessels will occur only when the vessel is fishing under a groundfish DAS within the U.S./Canada Management Areas.

In § 648.10(b)(2)(i), the reference to § 648.85(a)(2)(iii) is corrected to read § 648.85(a)(3)(ii).

In § 648.10(b)(2)(v), the inadvertent reference to paragraph (b)(2)(v) is removed.

In § 648.14, paragraph (a)(132) is revised to reflect the application of the gear requirement to the Eastern U.S./Canada Area.

In § 648.14, paragraph (a)(134), and paragraphs (a)(142) through (152) are revised as a result of the disapproval of the CA II Haddock SAP and the CA I Hook Gear SAP.

§ 648.14, paragraph (c)(24) is revised to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.14, paragraph (c)(30) is revised to reflect disapproval of the exemption of shrimp trawls from the WGOM Habitat Closure Area.

In § 648.14, paragraph (c)(50) is removed to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.80, paragraphs (a)(8)(i), (ii), and (iv) are revised to replace the word ''bycatch,'' with ''incidental catch,'' to reflect the definition of bycatch used in the Magnuson-Stevens Act.

In § 648.80, paragraph (a)(8)(iii) is revised to correct an omission in the proposed rule regulatory text, but referred to in the preamble to the proposed rule, by including language that provides the Council with the ability to recommend to the Regional Administrator, through a framework adjustment, an exemption that would allow vessels to retain and land regulated multispecies.

In § 648.80, paragraph (b)(11) is revised to include language referencing 50 CFR part 648, subpart D.

In § 648.80, paragraph (i)(4) is revised to clarify that the requirement to send a letter to the Regional Administrator is annual.

In § 648.81, paragraph (c)(2)(iii) is added to reflect the disapproval of the provision that would have excluded

surfclam and ocean quahog dredge gear from those portions of the NLCA that reside outside the Nantucket Lightship Habitat Closure Area.

In § 648.81(d)(2), the reference to paragraphs (b)(2)(ii) and (iii) is corrected to read paragraphs (f)(2)(ii) and (iii).

In § 648.81, paragraph (h)(1)(i) is revised to reflect the disapproval of the shrimp trawl exemption from the WGOM Habitat Closure Area.

In § 648.82, paragraph (b)(6) is revised, as requested by the Council, to include language to round up to the nearest 50 lb (22.7 kg) an adjustment to the cod trip limit for limited access Handgear A permitted vessels for ease of administration and enforcement. This paragraph is also revised to reflect that the cod trip limit adjustment is dependent on changes to the GOM cod trip limit, rather than the cod trip limit.

In § 648.82(c)(1), the date for reported landings to determine a vessel's baseline DAS allocation is corrected to be consistent with the date in the preamble of the proposed rule.

In § 648.82, paragraphs (c)(1) and (d) are revised to clarify the permit categories for which a DAS baseline shall be defined and a DAS allocation made available, respectively.

In § 648.82, paragraph (c)(1) is revised to clarify that a vessel's Amendment 13 used DAS baseline should never exceed the vessel's annual DAS allocation prior to August 1, 2002.

In § 648.82, paragraph (d)(4) is revised, as requested by the Council, to more accurately reflect the criteria and procedure for not reducing DAS allocations and modifying DAS accrual.

In § 648.82, paragraph (e) is respecified as paragraphs (e)(1) and (e)(2) for clarification.

In § 648.82, paragraph (k)(3) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that vessels may submit a DAS lease application prior to the start of a fishing year.

In § 648.82, paragraph (k)(3)(i) is revised, as requested by the Council, to include the following language: ''Aggregate data may be used in the analysis of the DAS Leasing Program.''

In § 648.82, paragraph (k)(3)(iv) is revised, as requested by the Council, to clarify that additional DAS associated with a limited access Large Mesh permit may not be counted towards a vessel's 2001 fishing year allocation when determining how many DAS a vessel may lease.

In § 648.82, paragraph (l)(1)(ii) is revised to include a restriction on gross tonnage that was omitted from the proposed rule in error. This change makes the regulations consistent with the intent of the Council.

In § 648.85, paragraph (a)(3)(i) is revised to clarify that VMS double polling per hour would occur in the U.S./Canada Management Areas only for groundfish DAS vessels declaring a groundfish DAS in this area.

In § 648.85, paragraph (a)(3)(ii) is revised to clarify that groundfish DAS vessels must declare into the U.S./Canada Management Areas only when intending to fish under a groundfish DAS.

In § 648.85(a)(3)(ii), the incorrect reference to paragraph (b)(4) is removed.

In § 648.85, paragraph (a)(3)(iii) is revised to be consistent with Amendment 13, as requested by the Council, to indicate that the gear requirements under the Understanding are specific to the Eastern U.S./Canada Area only. In addition, a reference to paragraph (a)(1) is corrected to read paragraph (a)(1)(i), and a reference to paragraphs (a)(6)(i) and (ii) is corrected to read paragraphs (a)(3)(iii)(A) and (B).

In § 648.85, paragraphs (a)(3)(iii) and (b)(3)(x) are clarified to read that a vessel fishing in the Eastern U.S./Canada Area may fish with both a haddock separator trawl and a flatfish net on the same trip.

In § 648.85, paragraphs (a)(3)(iii)(A) and (B) are revised to reflect changes made to the gear requirements under the Understanding based on public comment received.

In § 648.85, paragraph (a)(3)(iv)(A) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that the 500-6lb (227–kg) daily cod limit is a landing limit rather than a possession limit and includes a maximum trip limit of 5,000 lb (2,270 kg). This paragraph further clarifies that this trip limit is specific to the Eastern U.S./Canada Area only.

In § 648.85, paragraphs (a)(3)(iv)(A)(*1*) and (*2*) are added to include language that the Eastern U.S./Canada Area will close upon attainment of 100 percent of the cod TAC.

In § 648.85, paragraphs (a)(3)(iv)(A)(*1*), (B)(*3*), and (C)(*3*) are revised to reflect that all vessels will be prohibited from retaining cod, haddock, and yellowtail flounder, respectively, once 100 percent of the respective TACs are projected to be attained.

In § 648.85, paragraph (a)(3)(iv)(B) is revised to reflect that the haddock limit is a landing limit rather than a possession limit.

In § 648.85, paragraphs (a)(3)(iv)(B)(*3*) and (C)(*3*) are corrected, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraphs (a)(3)(iv)(C)(*1*) and (*2*) are revised to reflect that the only yellowtail flounder trip limit in the U.S./Canada Management Areas, prior to any adjustment, is within the CA II Yellowtail Flounder SAP.

In § 648.85, paragraph (a)(3)(iv)(E) is corrected to be consistent with Amendment 13, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraph (a)(3)(v) is revised to clarify the daily reporting requirements for cod, haddock, and yellowtail flounder for vessels declared in the U.S./Canada Area.

In § 648.85, paragraphs (b)(1) and (2) are revised to reflect the disapproval of the abbreviated SAP process proposed in Amendment 13.

In § 648.85, paragraph (b)(3)(v) is revised and paragraphs (b)(3)(v)(A) and (B) are removed to reflect a change to the VMS declaration regulations resulting from disapproval of the CA II Haddock SAP.

In § 648.85, paragraph (b)(3)(viii) is revised to clarify that the cod trip limit in the CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession specified for the Eastern U.S./Canada Area.

In § 648.85, paragraph (b)(4) is revised and paragraph (b)(6) is removed to reflect disapproval of the Closed Area II Haddock SAP. In addition, paragraph (b)(4) has been clarified to indicate that only limited access NE multispecies vessels are allowed to fish in the SNE/MA Winter Flounder SAP. Also, paragraph (b)(4)(iv) is modified to replace phrase ''NE multispecies'' with ''regulated species.''

In § 648.85, paragraph (b)(5) is removed to reflect disapproval of the CA I Hook Gear SAP.

In § 648.85, paragraph (c)(2)(iii)(C) is revised, as requested by the Council, to specify that the GB TAC referred to is the GB cod TAC.

In § 648.86, paragraph (b)(2)(iii) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.87, paragraph (b)(1)(i) is corrected to refer to a sector allocation instead of a framework adjustment.

In § 648.87, paragraphs (b)(1)(vii), (b)(1)(ix), (b)(2)(x), (c)(1), (c)(2), (c)(3), and (d)(1) were modified, and a new paragraph (b)(1)(xv) was added in order to ensure effective administration and enforcement of the sector allocation program. These changes, edits and additions clarify what requirements sector participants must comply with, that sector participants may be charged jointly and severally pursuant to 15 CFR

Part 904, and that sector participants must possess a Letter of Authorization issued by NMFS which authorizes participation in the sector and exempts them from certain fishery regulations necessary to fish in accordance with an Operations Plan.

In § 648.87, paragraph (b)(1)(xvi) was added, consistent with Amendment 13, to specify the NE multispecies management measures that all Sectors, fishing under a TAC allocation, must abide by.

In § 648.87, paragraph (b)(2) is revised to clarify that both an Operations Plan and a Sector Contract must be submitted to the Regional Administrator.

In § 648.87, paragraph (c) is modified to add Regional Administrator authority to exempt members of an approved sector from Federal fishing regulations.

In § 648.87(c)(1), the reference to paragraph (c)(1) is corrected to read paragraph (b)(2).

In § 648.87, paragraph (c)(4) was added in order to ensure effective administration and enforcement of the sector allocation program. This change indicates that the Regional Administrator may withdraw approval of a Sector, after consultation with the Council based on a Sector participants noncompliance with the Sector's Operation Plan or if the Operations Plan undermines the achievement of fishing mortality objectives of the NE Multispecies FMP.

In § 648.87(d)(1), the reference to paragraphs (e)(1)(ii) and (d) are corrected to read paragraphs (d)(1)(ii) and (c), respectively.

In § 648.87, paragraph (d)(1)(i) is revised to correct the definition of the GBCHSA to include the Eastern U.S./Canada Area, which was incorrectly omitted from the definition in the proposed rule.

In § 648.87(d)(1)(iii)(A), paragraph (b)(1)(i) is corrected to read (b)(2).

In § 648.88, paragraph (a)(1) is revised, as requested by the Council, to include language to round up to the nearest 25 lb (11.4 kg) an adjustment to the cod trip limit for open access Handgear permitted vessels for ease of administration and enforcement.

In § 648.89, paragraph (e)(3)(ii) is corrected to be consistent with the letter of authorization requirements of the other closed areas.

In § 648.90, paragraph (d) is revised and paragraph (e) is added to reflect disapproval of the removal of the Flexible Area Access Program.

Classification

The Regional Administrator determined that the FMP amendment implemented by this rule is necessary for the conservation and management of the NE multispecies fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

A notice of availability of the FSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on February 6, 2004 (68 FR 5856). Through the FSEIS, NMFS has analyzed project alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and has considered the objectives of the proposed action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS has also considered public and agency comments received during the EIS review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Council's preferred alternative. NMFS also concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. A copy of the ROD for Amendment 13 is available from the Regional Administrator (*see* **ADDRESSES**).

As described in the preamble to the proposed rule, this action is being taken consistent with the Court Order issued in *CLF* v. *Evans*, which requires implementation of Amendment 13 no later than May 1, 2004. NMFS has been developing the implementing regulations for Amendment 13 since January 2004 with goal of implementing Amendment 13 on May 1, 2004. However, a provision (Div. H, section 105) in the Consolidated Appropriations Act of 2004 precluded NMFS from expending any funds authorized for Fiscal Year 2004 to ''implement any measures to reduce overfishing and promote rebuilding of fish stocks managed under the Management Plan [Northeast Multispecies FMP] other than such measures set out in the final rule.'' This language prevented NMFS from implementing Amendment 13 as a final rule on time to be in compliance with the *CLF* court order unless it was repealed before May 1, 2004. However, on April 13, 2004, President Bush signed into law H.R. 2584, which contains a provision repealing Section 105 of division H of the Consolidated Appropriations Act of 2004, thus enabling NMFS to implement Amendment 13.

To comply with the Court-ordered May 1,2004 implementation of Amendment 13, the Assistant Administrator for NMFS, under 5 U.S.C. 553(d)(3) finds good cause to waive the 30-day delayed effectiveness for the management measures contained in Amendment 13. Although NMFS is waiving the 30-day delay in effectiveness, the implementing regulations for Amendment 13 will not take effect until May 1, 2004, or as otherwise stated in the ''Dates'' section above.

This rule contains 21 new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

1. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648–0202, (10 min/response);
2. Limited access Handgear A permit appeals, OMB Control Number 0648-0202, (2 hr/response);
3. DAS baseline appeal, OMB Control Number 0648–0202, (2 hr/response);
4. DAS Transfer Program application, OMB Control Number 0648–0202, (5 min/response);
5. VMS purchase and installation, OMB Control Number 0648–0202, (1 hr/response);
6. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648–0202, (5 sec/response);
7. VMS proof of installation, OMB Control Number 0648–0202, (5 min/response);
8. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB Control Number 0648–0202, (5 min/response);
9. Notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP, OMB Control Number 0648–0202, (2 min/response);
10. Expedited submission of a proposed SAP, OMB Control Number 0648-0202, (20 hr/response);
11. Request to power down VMS for at least 1 month, OMB Control Number 0648–0202, (5 min/response);
12. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648–0202, (5 min/response);
13. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern

Yellowtail Trip Limit Area, OMB Control Number 0648–0202, (5 min/response);

14. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs, OMB Control Number 0648–0202, (5 min/response);

15. Request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption, OMB Control Number 0648–0202, (5 min/response);

16. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648–0202, (5 min/response);

17. Submission of a sector allocation proposal, OMB Control Number 0648–0202, (50 hr/response);

18. Submission of a plan of operations for an approved sector allocation, OMB Control Number 0648–0202, (50 hr/response);

19. Daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs, OMB Control Number 0648–0212, (0.25 hr/response);

20. Annual reporting requirement for sectors, OMB Control Number 0648–0202, (6 hours/response); and

21. Trip notification for vessels participating in the Eastern U.S./Canada Area for the purpose of observer coverage, OMB Control Number 0648–0202, (5 min/response). Public comment is sought regarding: 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; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared this FRFA in support of Amendment 13 to the Fishery Management Plan for Northeast Multispecies (Amendment 13). The FRFA describes the economic impact that this final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the initial RFA (IRFA) for the proposed rule to implement Amendment 13 (69 FR 4362, January 29, 2004) and the corresponding economic analyses prepared for Amendment 13 (*e.g.*, the FSEIS and the Regulatory Impact Review (RIR)). For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and the FSEIS are available from NMFS, Northeast Regional Office and on the Northeast Regional Office Website (*see* **ADDRESSES**). A description of the reasons why this action is being considered, the objectives of, and legal basis for, the final rule is found in the preamble to the final rule.

Description of and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The final rule implements changes affecting any vessel holding a limited access groundfish permit, an open access handgear-only permit, and vessels that hold an open access Party/Charter permit. Based on fishing year 2002 (FY 2002) data, the total number of small entities that may be affected would be 1,442 limited access permit holders, 1,994 Handgear permit holders, and 685 Party/Charter permit holders. However, since an open access permit holder may hold more than one permit, the total number of unique entities holding either a Handgear or a Party/Charter permit was 2,250 of which 1,565 held only a Handgear permit, 306 held only a Party/Charter permit, and 379 held both a Handgear and a Party/Charter permits. The Small Business Administration size standard for small commercial fishing entities is $3.5 million in gross receipts, while the size standard for small Party/Charter is $5.0 million in gross receipts. The commercial fishing size standard would apply to limited access permit holders, as well as open access Handgear only permits. Available data based on 1998–2001 average gross receipts show that the maximum gross receipts for any single commercial fishing vessel was $1.3 million. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial fishing entities would fall under the SBA size standard. In addition, since all Party/Charter vessels have gross receipts of under $5.0 million, these also fall under the SBA size standard. Since all entities were deemed to fall under the SBA size standard for small commercial and recreational fishing entities, there will be no disproportionate impacts between small and large entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The measures approved under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Initial vessel application for a limited access Handgear A permit; (2) limited access Handgear A permit appeals; (3) DAS baseline appeals; (4) DAS Transfer Program application; (5) VMS purchase and installation; (6) automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Management Area; (7) VMS proof of installation; (8) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (9) expedited submission of a proposed SAP; (10) request to power down VMS for at least 1 month; (11) request for an LOA to participate in the GOM Cod Landing Exemption; (12) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area; (13) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs; (14) request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption; (15) request for an LOA to participate in the Skate Bait-only Possession Limit Exemption; (16) submission of a sector allocation proposal; (17) submission of a plan of operations for an approved sector allocation; (18) daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Management Area and/or the associated SAPs; and (19) annual reporting requirement for sectors. The compliance costs associated with most of these new reporting and recordkeeping requirements are minimal, consisting only of postage and copying costs. Individual vessel owners or groups of vessel owners will be impacted by these

requirements. There will not be a need for professional skills to comply with these requirements, although groups of vessel owners applying for a sector allocation may be advised to seek outside consulting services in preparing and submitting a plan for a sector allocation. Additional information regarding the projected reporting or recordkeeping costs associated with this action was made available for review in NMFS's PRA submission to OMB on or about February 10, 2004.

Other Compliance Requirements

All groundfish DAS vessels participating in the U.S./Canada Understanding, including all participants in the CA II Yellowtail Flounder SAP, with the exception of the SNE/MA Winter Flounder SAP, must use VMS within these programs. Any vessel that does not currently possess a VMS must obtain one prior to fishing in the U.S./Canada Management Area. The cost of purchasing and installing VMS, along with the associated operational costs is currently estimated at $3,600 per vessel.

The required changes to mesh size relative to the no-action 2001 baseline (pre-court order and settlement agreement fishery) were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a codend was estimated to be $1,250. The mesh changes were estimated to affect 18 Day gillnet vessels that use tie-down nets in the GOM. The average cost to these vessels to replace their nets is estimated to be $7,794. The mesh changes were estimated to affect 31 Day gillnet vessels that use stand-up nets in the GOM. The average cost to these vessels to replace their nets was $9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fish in the GOM. The average cost to these vessels to replace their nets was estimated to be $18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was estimated to be $8,800. However, most requirements to purchase new nets to be in compliance with mesh regulations implemented by this final rule also have appeared in a series of emergency rules to implement the Court Order and subsequent Settlement Agreement. Therefore, for the majority of vessels that have continued in the fishery, these compliance costs have already been met.

The average cost for vessels fishing in the eastern US/Canada Management Area to replace their nets with a flatfish net was estimated to be $7500, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately $747. The modification of an existing flatfish net to meet the requirements of the final rule is estimated to be $550.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received forty-nine hundred and forty-one comments on the proposed rule. Of these, there were eleven comments on the IRFA and several comments that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule to implement Amendment 13.

One commercial fishing group submitted a number of comments on the IRFA. Those comments and NMFS's responses follow:

Comment A: The Agency's economic analysis (referring to the IRFA) focuses exclusively on fishing vessels, neglecting a review of the impacts on shoreside infrastructure, accessory businesses, and most importantly, the consumer. The analysis fails to address the magnitude of the effects on port infrastructure, including but not limited to dock owners, processors, gear, fuel and ice suppliers. Without this data and analysis, the review lends itself to more commentary about the analysis that is missing as opposed to the analysis that is present.

Response: The IRFA contained in the proposed rule fulfills the requirements of the RFA which directs Federal agencies to analyze economic impacts to small business entities resulting from implementing regulations. Neither the RFA, nor Federal caselaw require Federal agencies to analyze the expected economic impacts resulting from their regulations on small entities *indirectly* affected by the agency's actions. Instead, the RFA analysis is limited to small entities which will be *directly* regulated by a Federal agency. In this case, the analysis is focused on vessels that comprise the affected NE multispecies fleet. The Council's economic analysis contained in Amendment 13 and the RIR address the commenter's concerns. A thorough breakdown of economic impacts by industry, by port, is provided in Volume 1, Section 5.4.6 of Amendment 13. Results of that analysis fulfills the requirements of E.O. 12866 which requires the Agency to take into account all economic impacts to the Nation resulting from rulemaking. *See also* response to comment 47.

Comment B: The Agency's analysis of the economic impacts is incomplete and not entirely helpful. The Agency itself writes, regarding its primary evaluation for vessels, ''Change in gross revenues provides an *incomplete picture* of the impact of the proposed action on vessel profitability making it difficult to determine whether any given vessel may cease business operations.'' Without knowing the complete impact on fishing vessels how can one attempt to realize the full effect of the proposed rule?

Response: The economic analysis for evaluation of vessels in Amendment 13 is not incomplete. In the section cited by the commenter, the analyst is explaining why the Council did *not* use changes in gross revenue as a proxy for profitability, although it is not unusual to use this technique for fishery management actions where cost data is incomplete or unavailable. Instead, the Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed.

Comment C: NMFS states that no data collection system exists to collect cost data comparable to the permit database which collects information on landings and revenues, and there are no means to directly provide a reliable numerical estimate of current profit levels or how many vessels may be able to remain profitable once the proposed action is implemented. The commenter states that these statements only reinforce our frustration regarding economic impacts to communities.

Response: NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions,

and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in the FSEIS. *See also* response to comment 48.

Comment D: We are troubled by NMFS's admission that the DAS leasing model is incomplete. Incomplete analysis and modeling does not give a clear picture of the socio-economic effects of leasing, making it difficult to comment effectively on the impact to the industry and fishing communities.

Response: NMFS does not believe the mathematical programming model used to determine the profitability of DAS leasing is incomplete. There is no admission of an incomplete analysis found in the IRFA accompanying the proposed rule. Rather, NMFS has described the likely socio-economic impacts resulting from a DAS leasing program in the section entitled ''Steps Taken to Minimize Economic Impacts.''

The Office of Advocacy, U.S. Small Business Administration (Advocacy) submitted the following comments on the IRFA:

Comment E: Advocacy notes that NMFS discusses the economic impacts of the various proposed rule requirements individually, and there is no discussion on what the final overall impact of all of the actions and compliance requirements will be on small fishers. Advocacy believes that the transparency and usability of the impact assessment would be improved for use by interested small entities if the costs were presented in a summary table. It is difficult to discern the total cost of the rule on any particular vessel even if one knows all of the data regarding the vessels size and operation location. Advocacy would like to see an introductory statement regarding total impacts to the industry.

Response: NMFS has concluded that the approach used in the analysis does not lend itself easily to a broad interpretation of total impacts or impacts to a typical or average multispecies vessel. In many analyses, profitability is assumed to be shared equally among vessels regardless of different geographic areas, gear type, vessel size, etc. In the Amendment 13 economic analysis, the Council was able to specify a more exact estimate of profitability depending upon the socio-economic description of vessels, specifically in regard to vessel size, gear, and port of landing in terms of profitability. This allows a vessel owner of a specific sized vessel, from a specific geographic area, using a specific gear type, to ascertain the impact of the final rule on a particular vessel. However, in response to Advocacy's request, NMFS has produced a summary table of economic impacts to small vessels resulting from this rule. This table appears as an appendix to the FRFA, which can be obtained from NMFS, Northeast Regional Office and on the Northeast Regional Office Web site (*see* **ADDRESSES**).

Comment F: An additional change to the presentation of costs that would improve transparency of the analysis would be a detailed description of which compliance requirements are included in the revenue loss and business closure analysis described on pages 4377 to 4379.

Response: The Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed. Specific compliance costs, such as required gear changes, cannot be gleaned from this model. Therefore, the contribution of these costs in determining profitability cannot be accounted for because they are implicit to the economic model. In addition, it is important to note that the replacement of nets occurs on a regular basis regardless of required replacements due to changes in regulated mesh size, and these costs are captured by the economic model.

Comment G: NMFS distinguishes between small vessels, medium size vessels, and large vessels in terms of expected economic impact. With the exception of an explanation of what would be classified as a small trawl vessel, there is no information about how NMFS has determined what is a small vessel, medium vessel, or large vessel.

Response: In the economic analysis accompanying Amendment 13, large vessels are defined as greater than 70 ft (21.35 m) in total length, medium vessels as 50 ft (15.25 m) to 70 ft (21.35), and small vessels less than 50 ft (15.25 m).

Comment H: NMFS states that the costs associated with the reporting and recordkeeping requirements are minimal and consist only of postage and copying costs without providing an estimate of those costs. Moreover, the estimated time for completing the paperwork is approximately 82 hours. There is no indication that the level of expertise for completing forms has been considered. If these forms require the professional services, complying with the paperwork requirements of the rule would be costly. Even if the forms can be filled out by the business owner, it is time that is being spent that the business owner could spend concentrating on something else. Were these things considered when NMFS concluded that the cost would be minimal? Advocacy encourages NMFS to provide an estimate of what the additional costs may be, as well as a better explanation of its conclusion that the costs will be minimal.

Response: The analysis of costs of recordkeeping and reporting contained in the IRFA is consistent with OMB guidance on burden estimates under the PRA. NMFS recognizes that, in the past, burden hours were costed out a certain rate suggested by OMB. However, recent OMB guidance requires that only costs of postage and copying should be considered. Postage costs are assumed to be $0.37 per submission and copying costs are assumed to be $0.10 per page.

Comment I: In the description and estimate of the number of small entities subject to the proposed rule, NMFS gives a thorough discussion of the commercial fishing industry. However, in terms of recreational Party/Charter vessels, NMFS merely states the size standard for a small Party/Charter vessel and the number of Party/Charter permits that it has issued in the past. There is no information about how many of the recreational vessels would qualify as small business under the 100 employee size standard.

Response: Advocacy is correct. NMFS assumed that the public was aware that Party/Charter vessels have relatively small crews, usually 3 to 4 persons. None of the 685 Party/Charter vessels cited in the IRFA have a crew size greater than 100 employees. In addition, the SBA definition of a small Party/Charter vessel is one which has gross receipts under $5M. Under this definition, none of the Party/Charter vessels affected by this rule are considered small entities under the RFA.

Comment J: NMFS asserts that the majority of the Party/Charter vessels earn at least 75 percent of fishing income from passenger fees. However, no basis is provided for that statement. There is also no information regarding average vessel income.

Response: The percentage of fishing income from passenger fees for vessels

with a Charter/Party permit, whether they fish exclusively Party/Charter or fish commercially part of the year, is derived directly from the NMFS dealer database. Average income per vessel was not estimated since this would have most likely required a unique survey of Party/Charter vessels to account for refreshment, rental of fishing gear, etc. However, NMFS maintains that the relaxation of the bag limit will increase profitability in the Party/Charter business because it is likely to lead to greater passenger demand and increased frequency of party/charter trips.

Comment K: Advocacy states that some members of the fishing industry maintain that the proposed rule includes provisions that were not intended by Amendment 13, including fishing area closures that were not intended by the Council. Specifically, they contend that the closure of the GB Eastern U.S./Canada Management Area when the cod quota is reached may jeopardize Amendment 10 to the Sea Scallop FMP, and they are concerned about the extension of cod trip limits and gear requirements to the Western U.S./Canada Management Area. Advocacy is concerned that these inconsistencies may increase the burden on small entities and that they may not have been considered fully in determining the economic impact of the rule, as required by the RFA.

Response: NMFS has fully responded to industry comments regarding inconsistencies with Amendment 13 in the final rule. (see responses to Comments 16 through 18 and 20 through 23 in the preamble to this rule). NMFS, in responding to these comments, has modified the proposed rule as it applies to the U.S./Canada Management Area. Specific changes made in this final rule and their economic impacts to vessels are discussed in the following section, *Economic Impacts Resulting from Disapproved Measures and Changes to the Proposed Rule.*

Comment L: One commenter noted that, under the proposed alternative, there would be an impact in New England ports of $135 million in lost revenue, $54 million in lost personal income, and 1,900 affected jobs, contrasted with $95 million in lost revenue, $38 million in lost personal income, and 1,300 affected jobs associated with the stepped reduction alternative (Alternative 1B) and questioned why NMFS chose to implement an alternative that would produce the same long-term goals, yet at a much larger first-year cost.

Response: NMFS recognizes that Alternative 1B is a significant alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B is estimated to yield a reduction of $28 million in first year revenues compared to $10-40 million for the preferred alternative. However, Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent in 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. Therefore, profitability losses and gains could not be compounded, but only considered on a year-to-year basis. Applying the area closure model to the full 65-percent reduction in DAS would have misrepresented the year-4 impacts, so it was not done. Alternative 1B also contains the 2:1 DAS counting in SNE and the raised footrope trawl in the CC/GOM stock area. Presumably, at least part of the negative economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. It is important to note that in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10-percent reduction in DAS. NMFS believes that it is more likely that cumulative negative economic impacts of 4 years of DAS reductions under Alternative 1B would exceed that of the preferred alternative, especially since the difference between the two alternatives in 2004 is only about $12 million in gross sales. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, the FSEIS notes that the negative impacts attributable to the preferred alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the preferred alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1 was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction.

While much of the discussion above focuses on impacts to vessels, it is important to note that changes in impacts on revenues earned by the NE multispecies fleet would mirror impacts to the general economy, *e.g.*, revenues earned by non-fishing sectors, personal income, job growth, etc. The Council estimated impacts to the general economy by observing changes in harvest rates and utilizing an input-output model (IMPLAN).

Economic Impacts Resulting From Disapproved Measures and Changes to the Proposed Rule

As discussed in the preamble of this final rule, NMFS has disapproved seven proposed management measures in Amendment 13, including: An abbreviated application process for SAPs; the CA II Haddock SAP; the CA I Hookgear Haddock SAP; a prohibition on the use of surfclam and ocean quahog dredges in the NLCA; the exemption to allow shrimp trawl gear in the WGOM Closure Area; the GB hookgear cod trip limit program; and the removal of the FAAS. In addition, as discussed in the preamble, NMFS has modified proposed measures regarding the U.S./Canada Management Area of GB, on the basis of public comments received.

The disapprovals of the proposed SAPs in CA I and II will reduce economic benefits vis-a-vis the proposed rule. However, since these SAPs were not implemented during the 2001 baseline period, these disapprovals will have no economic impact on NE multispecies vessels resulting from the final rule, as would be expected under a no action alternative. In the IRFA, under the Category B DAS discussion, NMFS noted that fishing under Category B DAS in these programs will enhance the profitability of participating vessels. However, the management of the SAPs must also meet the requirements of NEPA, the Magnuson-Stevens Act, and other applicable laws, as explained in the preamble of this final rule. It was concluded that the CA II haddock access program could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons the proposed SAP is inconsistent with National Standard 1 and National Standard 2. Amendment 13 does not include information on whether a directed fishery on haddock in CA I

would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved.

The disapproval of the expedited process for issuance of SAPs is administrative in nature and should not affect the profitability of any particular SAP.

Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closed areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

The disapproval of the prohibition of surfclam and ocean quahog dredges in portions of the NLCA that are not contained in the Nantucket Lightship Closed Habitat Area will increase economic benefits to vessels participating in these fisheries vis-a-vis the proposed rule. However, when compared to the 2001 baseline, the disapproval will have no economic impact to these vessels resulting from the final rule, since they are already engaged in fishing in the NLCA, tantamount to a no action alternative. Nevertheless, as discussed in the IRFA, surfclam and ocean quahog vessels currently utilizing the NLCHA are expected to undergo a decrease in revenues of 0.9 percent resulting from the prohibition on fishing in that area. See the response to Comment 6.

The disapproval of an exemption for shrimp trawlers to fish in the WGOM Closed Area will reduce economic benefits vis-a-vis the proposed rule. However, the exemption in all other areas outside the small mesh exemption line will allow shrimp trawlers to expand their harvest, and thus, the net economic impact of the exemption will increase profitability of individual vessels relative to the 2001 baseline. This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

The disapproval of the GB hookgear cod trip limit program is likely to have a negative economic impact on individual vessels relative to the proposed rule, since this would have allowed for a higher trip limit under certain spatial and temporal conditions. However, when compared to the 2001 baseline, there is no economic impact from disapproving this measure because it is identical to a no action alternative.

The disapproval of the Council's recommendation to eliminate the FAAS will have no economic impact to vessels. The FAAS represents a rarely used administrative procedure to implement rules quickly.

The changes to the proposed rule regarding the U.S./Canada Management Area are an allowance for vessels other than groundfish DAS vessels to continue to fish in the Eastern U.S./Canada Management Area, and the relaxation of the cod limit and gear restrictions, as described in the preamble of this final rule, for groundfish DAS vessels fishing in the Western U.S./Canada Management Area. Removing the prohibition on fishing by other gears in the Eastern U.S./Canada Management Area will increase economic benefits to those vessels relative to the proposed rule, in which all gears capable of catching groundfish would have been prohibited. However, since those vessels cannot retain NE multispecies when the TACs are reached, as they could in 2001, there will be a negative impact on revenues compared to the 2001 baseline period, but limited by the fact that NE multispecies is a limited incidental catch associated with a relatively large catch of scallops or monkfish by category A and B vessels. Relaxation of the cod limit and the removal of the restriction to use flatfish nets or separator trawls in the Western U.S./Canada Management Area will yield positive economic impacts to affected DAS groundfish vessels vis-a-vis the proposed rule. The cod trip limit would increase from 500 lb (1,102 kg) to 1,000 lb (2,204 kg) and cost savings will be realized because gear modification will not be required in the Western U.S./Canada Management Area. However, when compared to the 2001 baseline, the reduction in the cod limit from 2,000 lb (4,408 kg) to 1,000 lb (2,204 kg) would continue to negatively impact revenues of individual vessels participating in the Western U.S./Canada Management Area. The removal of the requirement to use a haddock separator trawl or flatfish net when fishing in the Western U.S./Canada Management Area represents a decrease in compliance costs and concomitant increase in profitability for certain vessels, relative to the proposed rule, that would otherwise have had to obtain a new flatfish net or modify existing haddock or flatfish nets at costs estimated to be $7,500, $747, and $550, respectively. Relative to the 2001 baseline, however, this represents no change in fishing requirements and, hence, there is no economic impact to vessels fishing this area. In response to public comment, this final rule will also allow a modification of existing flatfish nets for use in the Eastern U.S./Canada Management Area. The cost of this modification is estimated to be $550 (*see* compliance costs).

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

This final rule contains a number of measures that will provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated losses in profit. The major offsetting measures include the opportunity to use additional B DAS, leasing of DAS, DAS transfer, and sector allocation. This final rule is expected to achieve target fishing mortality rates for stocks that are most adversely affected.

Category B DAS

Category B DAS will be subdivided into two categories, one which would be used in SAPs (reserve B DAS), while the use of the remaining B DAS (regular B DAS) will be determined in a future framework action. The primary purpose of B DAS is to provide access to and increased yield from stocks that may be fished at higher levels. These opportunities would enhance profitability for vessels that may be able to participate in any one or more of these special fisheries.

DAS Leasing or Transfer

Particularly for vessels with few alternative fisheries, reductions in profit may be offset by the ability to acquire more DAS either through leasing or DAS transfer. The former would make DAS available to a vessel for a single fishing season whereas the latter would be a permanent transfer of DAS from one vessel to another. Transferred DAS would be subject to a 40-percent conservation tax on the transfer of active DAS, and a 90-percent conservation tax on inactive (Category C) DAS, but vessels would be able to acquire both Category A and Category B DAS. By contrast, a DAS lease would not be subject to a conservation tax, but vessels would be only allowed to acquire Category A DAS. It is not known which option any given vessels may choose to pursue, but analysis clearly suggests that making DAS available in some form of exchange can improve overall profitability for both buyer and seller. The following describes this analysis.

The economic impact of a DAS leasing program was estimated by simulating a quota market using a math programming model. The model maximized industry profits by choosing the days each vessel will fish (if any) of their own allocation, days they will lease from other vessels, and the number of their days they will lease to other vessels. Each vessel can only fish a maximum number of DAS, which is the sum of their Amendment 13 Category A DAS allocation and their FY 2001 allocation. Days fished above their allocation of days must be leased from other vessels. In the model, vessels were constrained to be either a lessee or lessor, although in a real-world situation a vessel could be a lessee and a lessor simultaneously. Restrictions were placed on the model, which did not allow days to be leased by larger vessels from smaller vessels, consistent with the restrictions of this program. Results from the model yielded a very efficient outcome in terms of maximizing industry profit with as few vessels as possible. In reality, the actual leasing of DAS among industry participants may not be as profitable as projected by the math programming model. An individual vessel's activity level chosen by the model is determined by its productivity, the maximum allowable days it can fish, the lease price for DAS, daily fishing costs, and the prices of each species, and a restriction that prohibits leasing of days from smaller vessels by bigger vessels. The model doesn't differentiate between areas fished, where vessels land their fish, and a variety of other factors that will influence the amount of DAS leased, including other fisheries in which the vessel can participate, and it assumes perfect information among participants.

Vessels were grouped together, regardless of gear type, and then stratified into fleets of 100 vessels. Each fleet was then paired with itself, and then with every other fleet to simulate trades between all 1,345 vessels that could potentially lease quota. For each sector pair, the model was run 50 times in order to incorporate a stochastic lease price, which was generated based on results from a previous linear programming model. Lease prices used in the model ranged from $218 to $2,093, with a mean of $1,029. Results from the simulations were used to examine changes in profitability which would occur from allowing DAS leasing.

Results from the simulation runs were stratified by gear type and length of vessel. Class 1 vessels were less than 50 ft (15.25 m); class 2 vessels were between 50 ft (15.25 m) and 69 ft (21.04 m), and class 3 vessels were 70 ft (21.35 m) and greater. The three gear types examined were hook (50 vessels), trawl (1,126 vessels) and gillnet (169 vessels). There were more vessels in the model than had Category A DAS in the proposed action. Because vessels can fish up to the total of their Category A DAS and their FY 2001 allocation, vessels with zero Category A DAS can still lease DAS, and therefore need to be included in the model. Because the model is attempting to maximize industry profit, under a DAS leasing scheme, fewer vessels will fish. However, mean profits for all vessels will be higher than if DAS trading were not allowed, and all vessels fished their allocation. Mean profits are also higher than those generated by actual fishing during calendar year 2002 by vessels actually fishing. Vessels that choose to lease all their DAS can greatly enhance their profit, since the owner is getting all the revenue from the lease without incurring any costs, and in particular by not having to pay labor costs. The decision from a vessel perspective on whether to lease DAS to other vessels is based on whether they can lease their DAS for more then they would earn after paying expenses, including payments to the crew. If a vessel decides to lease DAS from other vessels, it is based on whether it can earn more from a leased DAS than what it will pay for the lease, plus what it will pay to the crew and to cover other expenses.

Model results generally showed the flow of lease days going from larger vessels to smaller vessels. Trawl and gillnet vessels less than 50 ft (15.25 m) in length were projected to use more DAS than in 2002 under a DAS leasing scheme. Trawl and gillnet vessels greater than 50 ft (15.25 m) were projected to have their DAS usage decline from 2002 levels. Hook vessels were projected to see their DAS increase. Restrictions on DAS trading make it difficult for larger vessels to lease from smaller vessels, but the opposite does not hold. Small vessels have a large potential number of vessels that they can lease from, which is what model results show. The analysis concludes that larger vessels can profit by leasing their days to smaller vessels. For example, length class 2 trawl vessels average profit was $68,387 using an average of 36.92 days of effort under a DAS leasing scheme, while their average profit was $31,428 using 46.13 days of effort in 2002. Small trawl vessels average profit was $41,111 using 31.9 days of effort under DAS leasing, while their 2002 average profit was $12,271, and their average DAS was 25.13. This demonstrates that both sectors would be better off with a DAS leasing program than fishing at their calendar year 2002 effort levels.

Additionally, the average profit levels were projected to be higher under DAS leasing than if the vessels fished at their allocated 2004 levels. This demonstrates DAS leasing could provide substantial regulatory relief to these vessels compared with no leasing (no action alternative).

Handgear A Permit

The final rule converts the existing open access handgear permit into a limited access category and creates an open access category for Handgear A permits. Vessels that qualify for a limited access Handgear A permit will benefit from a relaxation of the cod trip limit and will not be subject to trip limits on any other species. Vessels that do not qualify for limited access Handgear A permit will still be able to obtain an open access permit, but the cod trip limit will be much lower than current Handgear only permit holders may retain. Available data show that, even though a large number of open access handgear permits have been issued in the past, less than 10 percent of these permits actually report landings of any amount of either cod or haddock. A preliminary assessment of qualification indicates that approximately 150 vessels will qualify for a limited access Handgear A permit. Thus, the conversion to a limited access permit with the potential to achieve higher landings and higher incomes overall also may permit the majority of small entities currently participating in the fishery to continue operating. The

no action alternative would yield no economic benefits as compared to the proposed action. Therefore, the proposed alternative is favorable when compared to the no action.

Elimination of the Area Restriction for the Northern Shrimp Exempted Fishery

The northern shrimp fishery will no longer be restricted to the area shoreward to the small mesh fishery exemption line. However, vessels will continue to be prohibited from fishing in the WGOM Habitat Closure Area. While this prohibition will reduce economic benefits vis-a-vis the proposed management measure, which would have allowed fishing in a much larger area, the lifting of the restriction to fish shoreward of the small fishery exemption line will yield an increase in the profitability of shrimp vessels, albeit smaller than originally proposed. The no action alternative would have yielded no economic benefits and would not have changed the economic conditions in the shrimp fishery. Therefore, this management measure is favorable when compared to the no action alternative.

Tuna Purse Seine Vessel Access to Groundfish Closed Areas

Tuna purse seine gear is defined as exempted gear for the purposes of the FMP. Tuna purse seine vessels will be allowed into all groundfish closed areas, subject only to the normal restrictions for using an exempted gear in the area. This will benefit the purse seiners by expanding groundfish areas available for fishing and, thus, allow those vessels to increase profitability. The Council recognizes that part of the seine contains mesh less than the regulated mesh size for the NE multispecies fisheries.

SNE General Category Scallop Vessel Exemption Program

Unless otherwise prohibited in 50 CFR 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in statistical areas 537, 538, 539, and 613—defined as the SNE General Category Scallop Exemption Area—when not under a NE multispecies DAS. This relieves a restriction and allows scallop vessels to enter expanded areas for the harvest of scallops, allowing those vessels to increase profits, if available. The no action alternative would yield no economic benefits, because vessels would be precluded from participating in this program. Therefore, the proposed alternative is favorable when compared to the no action alternative.

Modified VMS Operation Requirement

A vessel using a VMS can opt out of the fishery for a minimum period of 1 calendar month by notifying the Regional Administrator. Notification must include the date a vessel will resume transmitting VMS reports. After receiving confirmation from the Regional Administrator, the vessel operator can stop sending VMS reports. During the period out of the VMS program, the vessel cannot engage in any fisheries until the VMS is turned back on. This will reduce operating costs associated with VMS operation (*see* section 3.4.11 of Amendment 13). The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no action alternative.

Revised Standards for Certification for Incidental Catch/Exempted Fisheries

The standards for certification of a incidental catch/exempted fishery that were implemented through Amendment 7 would continue to be used. However, this measure allows the Regional Administrator to modify the 5-percent incidental catch rule and make additional modifications on a one-to-one basis under an accepted set of conditions. The economic benefits or costs of this measure are uncertain, since the Regional Administrator could decrease the percentage used in the incidental catch rule, as well as increase it. However, the measure is intended to allow a very controlled expansion of fishing areas, thus, benefitting vessels economically while conserving species of concern. The effect of the no action alternative would depend on the Regional Administrator's determination on a case-by-case basis, *e.g.*, if the Regional Administrator lowered the acceptable incidental catch percentage, the no action alternative would have a beneficial impact, but if the acceptable incidental catch percentage were increased, the no action alternative would have a negative impact.

Periodic Adjustment Process

The annual adjustment process is revised to be a biennial adjustment, with the PDT performing a review and submitting management recommendations to the Council every 2 years. This will tend to have a positive effect on profitability of individual vessels, since it expands their planning horizon, making their fishing operations more efficient and profitable. The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no action alternative.

U.S./Canada Resource Sharing Understanding

Management of GB cod, haddock, and yellowtail flounder is subject to the terms of the Understanding. The Understanding specifies an allocation of GB cod, haddock, and yellowtail flounder for each country. The management objective is for the U.S. fishery to harvest the shared stocks of cod, haddock, and yellowtail flounder at, but not above, the U.S. allocation. This allocation would be based on a formula, which includes historical catch percentage and present resource distribution. The economic implications of this agreement would depend on the specific allocation, the reduction in DAS attributable to steaming time, and other economic considerations such as fuel prices and Canadian and U.S. fish prices. This measure would most likely benefit larger vessels who traditionally fish GB. It would also allow each country to plan its fishing activities in advance which could result in a more efficient use of the limited resources found on GB, thus, increasing the profitability of individual vessels engaged in the fishery. The no-action alternative would yield no economic benefits as this system would not be established and fishermen would not be in a position to benefit from management measures established through this Understanding. Therefore, the proposed alternative is favorable when compared to the no-action.

Sector Allocation

Under this measure, sector allocation may be used to apportion part or all of groundfish fishery resources to various industry sectors. A self-selected group of permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector may be based on catch (hard TACs) or effort (DAS), with target TACs specified for each sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels if they desire. One of the major benefits of self-selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. A primary motivation for the formation of a sector is assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside the sector (*i.e.*, if the other vessels exceed their target TACs). This measure could benefit vessels within a sector, since they would be able to

better plan and control their fishing operations. However, as sector plans evolve, each plan would need to include an economic analysis to determine the extent, if any, that vessels outside the sector are negatively impacted. By creating a process for the formation of self-selecting sectors, Amendment 13 creates an opportunity for groups of vessels to adapt their fishing behavior so that they remain economically viable in the face of increasing restrictions imposed to rebuild groundfish stocks. The ability to form a sector could be an important component of providing flexibility to small commercial fishing entities to mitigate the economic impacts of the Amendment. Further, depending on the geographic location of the membership of a given sector, sector allocation could also provide an opportunity for fishing communities to reduce economic impacts. The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action alternative.

GB Hook Sector

The final rule creates a voluntary sector for longline/hook vessels on GB. This provides an opportunity for vessels to mitigate the impacts of the management alternatives. By organizing into a cooperative, vessels may be able to develop more efficient ways to harvest groundfish and minimize the inefficiencies that result from the regulations. While it is not possible to estimate the economic impacts of a sector until the actual participants are known, the pool of participants will probably be the vessels that have used longline gear to fish on GB in the past.

The are significant alternatives included in this final rule associated with the choice of the rebuilding measures and the disapproval of SAPs and other mitigating factors. In addition to the No-Action alternative which leaves the fishery unchanged, the phased-reduction alternatives 1B and 1D would have a lesser negative impact on multispecies vessels than the proposed alternative in the first year of the rebuilding period; $28.3M and $33M, respectively, compared to $40M for the proposed alternative. All other rebuilding alternatives would have a higher negative economic impact on vessels during the first year. The non-selection of the No-Action alternative results from a Court Order which required the agency to pursue a rebuilding plan for overfished stocks in the Northeast multispecies complex. The rationale for not selecting Alternative 1B is discussed above and in the response to Comment 30 in the preamble. Both 1B and 1D are phased-reduction alternatives; the difference being a hook limit for cod on Georges Bank for Alternative 1D yielding a greater economic impact than 1B. However, the point is that both phased-reduction strategies could yield greater rewards in the first year but at a much higher economic risk in the following three year period. It is this risk that the Council considered when deliberating on a preferred alternative. In addition, the preferred alternative consists of a B DAS program for fishing in the SAPs, which will potentially yield greater economic benefits for those fishers able to participate in this program. The phased-reduction alternatives do not include B DAS. The mitigating alternatives would all yield a higher economic benefit, primarily because they represent either the removal of current fishing restrictions or opportunities for expanded fishing. Therefore, the disapproval of 2 SAPs and the exemption for shrimp trawlers in habitat closed areas, specifically the WGOM habitat closed areas, actually constitute the non-selection of significant alternative since the proposed alternatives for these management measures would have yielded higher economic impacts to fishing vessels. A discussion of the rationale for these disapprovals appears in this final rule under ''Disapproved Measures''.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator and are also available at NMFS, Northeast Region (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 15, 2004.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, new definitions for ''Bottom tending mobile gear,'' ''Circle hook,'' ''DAS Lease,'' ''DAS Lessee,'' ''DAS Lessor,'' ''Handgear,'' ''Sector,'' ''Static gear,'' ''Stock of concern,'' ''Stocks targeted by the default measures,'' ''Sub-lease,'' ''Transboundary Management Guidance Committee,'' ''Transboundary Resource Advisory Committee,'' ''Tub-trawl,'' ''Tuna purse seine gear,'' and ''U.S./Canada Steering Committee,'' are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Bottom-tending mobile gear, with respect to the NE multispecies fishery, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

* * * * *

Circle hook, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

* * * * *

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use

of DAS to another NE multispecies limited access vessel.

* * * * *

Handgear, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

* * * * *

Sector, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

* * * * *

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

Stock of concern, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

Stocks targeted by the default measures, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

* * * * *

Transboundary Management Guidance Committee (TMGC), with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

Transboundary Resource Advisory Committee (TRAC), with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

* * * * *

Tub-trawl, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

Tuna purse seine gear, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

* * * * *

U.S./Canada Steering Committee, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

* * * * *

■ 3. In § 648.4, paragraph (a)(1)(i)(A), paragraph (a)(1)(i)(E) introductory text, paragraphs (a)(1)(i)(G), (a)(1)(i)(I)(*1*) and (a)(1)(i)(M), (a)(1)(ii) and paragraph (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(A) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(*1*) and (*2*) of this section.

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(*3*) *Application/renewal restrictions.* The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

* * * * *

(E) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

* * * * *

(G) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

* * * * *

(I) * * *

(*1*) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

* * * * *

(M) *Appeal of denial of permit—(1) Eligibility.* Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(*2*) *Appeal review.* The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(3) *Status of vessels pending appeal.* A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(ii) *Open access permits.* A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access mulitspecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) [Reserved]

* * * * *

■ 4. In § 648.7, paragraphs (a)(1) introductory text, (a) (1)(i), and (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) *Detailed weekly report.* Until otherwise required by the Regional Administrator, federally permitted dealers must submit to the Regional Administrator, or official designee, a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator, and a report of all fish purchases, except for surfclam and ocean quahog dealers or processors, who are required to report only surfclam and ocean quahog purchases. Once authorized in writing by the Regional Administrator, all dealers must submit daily reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surfclam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

* * * * *

(b) * * *

(1) * * *

(i) Unless otherwise required under § 648.85(a), the owner or operator of any valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. Once authorized in writing by the Regional Administrator, a vessel owner or operator must submit trip reports electronically, for example by using a VMS or other media. At that time electronic trip reports would replace the Fishing Vessel Trip Report. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (*i.e.*, less than 23 inches (58.4 cm), total length) or ''large'' (*i.e.*, 23 inches (58.4 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

■ 5. In § 648.9, paragraphs (b)(5) and (c) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(b) * * *

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification,

''real time'' shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

* * * * *

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h) or paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(ii) At least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas.

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 1 calendar month by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times.

(ii) *Letter of exemption*—(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

* * * * *

■ 6. In § 648.10, paragraphs (b), (c), and (f) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit;

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified in § 648.58;

(iii) A scallop vessel fishing under the Small Dredge program specified in § 648.51(e);

(iv) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section.

(v) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) A Part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish in the Eastern U.S./Canada Area, pursuant to § 648.85(a), begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required

by paragraphs (b)(2)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

(3)(i) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected, under paragraph (b)(3)(iii) of this section, to provide the notifications required by this paragraph (b), or unless the vessel has elected to fish in the Eastern U.S./Canada Area or Western U.S./Canada Area, as described under § 648.85(a)(2)(i), unless otherwise authorized under paragraph (b)(2)(v) of this section.

(ii) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section.

(iii) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

(c) *Call-in notification.* Owners of vessels issued limited access NE multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, and scallop vessels qualifying for a DAS allocation under the Occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish Category C or D permit, unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C or D permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(ii), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, port of landing and permit number, and that the vessel has ended a trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iv) of this section.

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of vessels issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through either the VMS system or by calling and providing the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(j)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using

the procedure described in paragraph (f)(1) of this section.

■ 7. In § 648.14, paragraphs (a)(39), (40), (43), (47), (52), (55), (90), (104), (116), (126); (b)(1) through (4); (c)(1), (c)(3), (c)(7), (c)(10) through (c)(15), (c)(21), (c)(24), (c)(26), (c)(29) through (c)(31), and (c)(33); the introductory text to paragraph (d); and paragraph (d)(2) are revised; paragraphs (c)(18), (c)(23), and (c)(32) are removed and reserved; and paragraphs (a)(128) through (162) and (c)(34) through (50) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

* * * * *

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17.

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and (ii) and 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), or (f)(2)(iii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

* * * * *

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

* * * * *

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, or enter or exit the declared area more than once per trip.

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii).

(133) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed as described in § 648.85(a)(3)(iv)(E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3).

(135) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(3)(i) through (x).

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(141) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(142) [*Reserved*]

(143) [*Reserved*]

(144) [*Reserved*]

(145) [*Reserved*]

(146) [*Reserved*]

(147) [*Reserved*]

(148) [*Reserved*]

(149) [*Reserved*]

(150) [*Reserved*]

(151) [*Reserved*]

(152) [*Reserved*]

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(6), fail to comply with the

restrictions and conditions under § 648.85(b)(6)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required under § 648.87(b)(1).

(156) If fishing under the Georges Bank (GB) Cod Hook Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year, or if fishing under a NE multispecies DAS, fish under the GB Cod Hook Sector in a given fishing year, unless as otherwise provided under § 648.87(b)(1)(xii).

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in § 648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under § 648.88(a)(2)(i), or fish with hooks greater than the number specified under § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(b) * * *

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) [Reserved]

(3) While fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1)(ii) or (g)(2)(ii), respectively, unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1)(ii) or (g)(2)(ii), respectively.

(c) * * *

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(5) or § 648.89.

* * * * *

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (g), and (h), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit.

* * * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(11) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS will gillnet gear, fail to comply with gillnet tagging requirements specified in § 648.80(a)(3)(iv)(A)(*4*), (a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(A)(*3*), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(C), (b)(2)(iv)(F), (c)(2)(v)(A)(*2*), and (c)(2)(v)(B)(*2*), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

* * * * *

(18) [Reserved]

* * * * *

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

* * * * *

(23) [Reserved]

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2)(ii) or (iii).

* * * * *

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi).

(31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

(33) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(k)(3).

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(37) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(k)(4)(ix).

(38) Sub-lease NE multispecies DAS.

(39) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(43) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) If permanently transferring NE multispecies DAS to another vessel, fail to forfeit all state and Federal fishing permits, or fish in any state or Federal commercial fishery indefinitely.

(49) If fishing under the cod trip limit specified in § 648.86(b)(2)(ii), fail to obtain an annual declaration, or fish north of the exemption line specified in § 648.86(b)(4).

(50) [Reserved]

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

* * * * *

(2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

* * * * *

■ 8. In § 648.23, paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) are revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

(iv) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

■ 9. Section 648.80 is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
CII3	42°22′	67°20′	(1)
SNE1	40°24′	65°43′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	(2)	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller

than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels*—(1) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets, and may stow nets in excess of 150.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) Number of nets. A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags.* Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(*1*) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(*2*) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be re-issued.

(v) *Hook gear restrictions.* Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or

hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels*—(*1*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 150 nets, and may stow nets in excess of 150 in accordance with § 648.23(b).

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(*2*) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(3) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh

multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Area defined in paragraph (a)(11) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of incidental catch of regulated species, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as incidental catch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental catch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce incidental catch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) *Exemption allowing incidental catch of regulated species.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time

and area, and the possibility of expansion in the fishery.

(iv) Incidental catch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′

SMALL MESH AREA I—Continued

Point	N. lat.	W. long.
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5⁄16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
Cl1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption,

must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°00′	70°13.2′
RF 12	42°00′	70°24.1′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. lat.	W. long.
GRF1	43°15′	70°35.4′
GRF2	43°15′	70°00′
GRF3	43°25.2′	70°00′
GRF4	43°41.8′	69°20′
GRF5	43°58.8′	69°20′

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of ⅜-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1]The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		70°00′ [1]	

[1]Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81

sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions—(i) Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10

percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeastly through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI–MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to

evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. lat.	W. long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′ [1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc1	(1)	73°00′
Sc2	40°00′	73°00′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	(2)	70°00′
Sc7	(3)	70°00′
Sc8	(4)	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc9	41°00′	(1)
Sc10	41°00′	71°40′
Sc11	(2)	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) Dredges must use a minimum of an 8-inch (20.3 cm) twine top.

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear

permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(*2*) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels*—(1) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm, and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair

trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*— (i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes*—(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

■ 10. Section 648.81 is revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point	N. lat.	W. long.
C1I1	41°00′	67°20′
C1I2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ [1]
C1I3	42°22′	67°20′ [1]
C1I1	41°00′	67°20′ [1]

[1] The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(v) of this section;

(iii) The vessel is fishing in the CA II Yellowtail Flounder SAP or the Closed Area II Haddock SAP as specified under paragraphs (b)(3) and (b)(4) of this section, respectively; or

(iv) Transiting the area, provided:

(A) The operator has determined that there is a compelling safety reason; and

(B) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. lat.	W. long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°5O′	70°20′
G10	40°50′	69°00′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

(d) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N. lat.	W. long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

(e) *Western GOM Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

WESTERN GOM CLOSURE AREA [1]

Point	N. lat.	W. long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to

persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

[March 1–March 31]

Point	N. lat.	W. long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

1 Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM9	43°00′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 New Hampshire Shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM10	43°30′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

1 Massachusetts shoreline.
2 U.S.-Canada maritime boundary.
3 Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

GEORGES BANK SEASONAL CLOSURE AREA

[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70° 00′

[1] Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′

CLOSED AREA I—NORTH HABITAT CLOSURE AREA—Continued

Point	N. lat.	W. long.
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIIH1	42°00′	67°20′
CIIH2	42°00′	67°00′
CIIH3	41°40′	66°43′
CIIH4	41°40′	67°20′
CIIH1	42°00′	67°20′

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(2) [Reserved]

(i) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the Cashes Ledge Closure Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that its gear is stowed in

accordance with the provisions of § 648.23(b).

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W.
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ W.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Restricted period*—(i) *Mobile gear.* From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192		

(2) *Restricted period*—(i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119		
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39°56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 206		

(2) *Restricted period*—(i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) [Reserved]

■ 11. Section 648.82 is revised to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B

DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section.

(5) *Small Vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004

fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under paragraph (j)(1) of this section, used DAS, for trips of more than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or more than 15 hours, will be counted as actual time.

(2) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

(d) *DAS categories and allocations.* For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use.* Beginning May 1, 2004, Regular B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Regular B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) *Category C DAS*—(i) *Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual

specified under paragraph (e)(2) of this section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, will be counted as actual time called into the DAS program.

(2) Starting in fishing year 2006, unless otherwise determined in accordance with paragraph (d)(4) of this section, for NE multispecies vessels fishing under a DAS in the SNE or MA Regulated Mesh Areas, as described in § 648.80(b)(1) and (c)(1), respectively, the ratio of DAS used to time called into the DAS program will be 1.5 to 1.0.

(f) *Good Samaritan credit.* See § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(i) [Reserved]

(j) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program.* (1) *Program description.* For fishing years 2004 and 2005, eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel,

subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (k)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C and D vessels.* A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating no greater than 20 percent of the baseline engine horsepower of the Lessor vessel. A Lessor vessel only may lease DAS to a Lessee vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(l) *DAS Transfer Program.* Except for vessels fishing under a Sector allocation, as specified in § 648.87, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall or a baseline gross registered tonnage that is no greater than 10 percent of the baseline length overall or the baseline gross registered tonnage, respectively, of the transferor vessel. For the purposes of this program, the baseline horsepower, length overall, and gross registered

tonnage specifications are those associated with the permit as of January 29, 2004.

(iii) The transferor vessel must forfeit all of its state and Federal fishing permits, and may not fish in any state or Federal commercial fishery.

(iv) NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, will be reduced by 40 percent upon transfer.

(v) Category C DAS, as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(2) *Application to transfer DAS.* Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application.* Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

■ 12. Section 648.83 is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

■ 13. Section 648.84 is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of,

or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

■ 14. Section 648.85 is revised to read as follows:

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section.

(1) *U.S./Canada Management Areas.* A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area.* The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

WESTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 1	42° 20′	68° 50′
USCA 2	39° 50′	68° 50′
USCA 3	39° 50′	66° 40′
USCA 4	40° 40′	66° 40′
USCA 5	40° 40′	66° 50′
USCA 6	40° 50′	66° 50′
USCA 7	40° 50′	67° 00′
USCA 8	41° 00′	67° 00′
USCA 9	41° 00′	67° 20′
USCA 10	41° 10′	67° 20′
USCA 11	41° 10′	67° 40′
USCA 12	42° 20′	67° 40′
USCA 1	42° 20′	68° 50′

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 12	42° 20′	67° 40′
USCA 11	41° 10′	67° 40′
USCA 10	41° 10′	67° 20′
USCA 9	41° 00′	67° 20′
USCA 8	41° 00′	67° 00′
USCA 7	41° 50′	67° 00′
USCA 6	41° 50′	66° 50′
USCA 5	41° 40′	66° 50′
USCA 4	41° 40′	66° 40′
USCA 15	41° 30′	66° 40′
USCA 14	41° 30′	65° 44.3′
USCA 13	42° 20′	67° 18.4′
USCA 12	42° 20′	67° 40′

(2) *TAC allocation.* (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. If the recommendation of the Council is not consistent with the recommendation of the TMGC, the Regional Administrator may select either the recommendation of the TMGC, or the Council. NMFS shall review the Council's recommendations and shall publish in the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and will publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs.* Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./

Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10. The VMS unit will be polled at least twice per hour in the U.S./Canada Management Areas, when the vessel has declared into the U.S./Canada Management Areas under a groundfish DAS, as specified in paragraph (a)(3)(ii) of this section.

(ii) *Declaration.* All NE multispecies DAS vessels that intend to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b)(3) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). No other type of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area. The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock Separator Trawl.* A haddock separator trawl is defined as a groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large mesh separating panel constructed with a minimum of 6.0 inch (15.2 cm) diamond mesh must be installed between the selvedges joining the upper and lower panels, as described in paragraph (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(*1*) *Two-seam bottom trawl nets*—For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80—85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes wide.

(*2*) *Four-seam bottom trawl nets*—For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(*1*) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end, so that the vertical dimension of the forward wing end measures 3.0 ft (0.9 m) or less in height. Floats are prohibited in the center 50 percent of the headrope.

(*2*) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) with the exception that the mesh size in the square of the top panel of the net, identified as the area located from the headrope to the beginning of the first belly, shall not be smaller than 12.0-in (30.5-cm) square mesh. The vertical dimension of the forward wing end may not measure more than 3.0 ft (0.9 m) in height.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, NE multispecies vessels fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part.

(*1*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area.

(*2*) [Reserved]

(B) *Haddock landing limit*—(*1*) *Initial haddock landing limit.* The initial haddock landing limit is specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting,

possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit—(1) Initial yellowtail flounder landing limit.* The initial yellowtail flounder possession limit is specific to the CA II Yellowtail Flounder SAP as specified in paragraph (b)(3)(viii) if this section, unless adjusted pursuant to paragraph (a)(3)(iv)(C)(*2*) and (*3*) of this section.

(*2*) *Implementation of yellowtail flounder landing limit for Western and Eastern U.S./Canada Areas.* When the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall impose and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western U.S./Canada Area and the Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified under paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, when 30 percent and/or 60 percent of the TAC allocations specified under paragraph (a)(2) of this section are projected to be harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or limit the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

(E) *Closure of Eastern U.S./Canada Area.* When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all groundfish DAS vessels, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), groundfish DAS vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of an NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must be submitted in 24–hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of cod, haddock and yellowtail flounder kept and total lb of cod, haddock, and yellowtail flounder discarded. For vessels that have declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of yellowtail flounder kept and total lb of yellowtail flounder discarded.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding.* At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(b) *Special Access Programs.* A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies.* A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies.* A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder SAP*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under an NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Yellowtail Flounder Access Area.* The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER ACCESS AREA

Point	N. lat.	W. long.
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′ [1]
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

[1] The U.S.-Canada Maritime Boundary.

(iii) *Season.* Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period June 1 through December 31.

(iv) *VMS requirement.* All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the area outside of the Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, provided the vessel fishes in this area under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP, or the Eastern U.S./Canada Area.

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to two trips per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP is 320 trips per fishing year.

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under an NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section, may not fish with, or possess on board, any fishing gear other than a haddock separator trawl or flounder trawl net (both nets may be onboard the fishing vessel simultaneously).

(4) *SNE/MA Winter Flounder SAP.* A limited access NE multispecies vessel fishing for summer flounder west of 72o 30' W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under an NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder on board;

(iii) The vessel must not be fishing under an NE multispecies DAS; and

(iv) Fishing for, retention, and possession of regulated species other than winter flounder is prohibited.

■ 15. Section 648.86 is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock*— (1) *NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) *Adjustments*—(A) *Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC. At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is

fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*— (1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (b)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00′ N. lat. and running eastward along 42°00′ N. lat. until it intersects with 69°30′ W. long., then northward along 69°30′ W. long. until it intersects with 42°20′ N. lat., then eastward along 42°20′ N. lat. until it intersects with 67°20′ W. long., then northward along 67°20′ W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified in § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board, vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 inches (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided in this section, nets of mesh size smaller than 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph

(d)(1)(iv) of this section), and vessels that have not been issued a letter of authorization pursuant to paragraphs (d)(1)(ii) or (iii) of this section, may possess on board and land up to 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 inches (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 inches (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 inches (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 inches (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 inches (7.62 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 inches (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii), and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption, as described in § 648.80(a)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) [Reserved]

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder*—(1) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in §§ 648.82(b)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(1)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(1)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT13	(1)	70° 00′
SYT12	41° 20′	70° 00′
SYT11	41° 20′	69° 50′
SYT10	41° 10′	69° 50′
SYT9	41° 10′	69° 30′
SYT8	41° 00′	69° 30′
SYT7	41° 00′	68° 50′
USCA1	42° 20′	68° 50′
USCA12	42° 20′	67° 40′
NYT1	43° 50′	67° 40′
NYT2	43° 50′	66° 50′
NYT3	44° 20′	66° 50′
NYT4	44° 20′	67° 00′
NYT5	(2)	67° 00′

[1] South facing shoreline of Cape Cod, MA.
[2] East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods April through May, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods June through September, and December through March, the vessel may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(2) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and (b)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(2)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(2)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT1	38°00′	(1)
SY2	38°00′	72°00′
SY3	39°00′	72°00′
SY4	39°00′	71°40′
SY5	39°50′	71°40′
USCA2	39°50′	68°50′
SYT7	41°00′	68°50′
SYT8	41°00′	69°30′
SYT9	41°10′	69°30′
SYT10	41°10′	69°50′
SYT11	41°20′	69°50′
SYT12	41°20′	70°00′
SYT13	(2)	70°00′

[1] East facing shoreline of Virginia.
[2] South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the period March through June, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the period July through February, vessels may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) During the months of January, February, April, May, July through September, and December, when the yellowtail flounder trip limit requirements for the Cape Cod/GOM and SNE/MA Yellowtail Flounder Areas are the same, vessels that obtain a yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section are not subject to the requirements specified under paragraphs (g)(1)(ii)(B) and (g)(2)(ii)(B) of this section.

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

■ 16. Section 648.87 is revised to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The sector allocation must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC, unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5–year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(3) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant 15 CFR part 904.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel operator and/or vessel owner signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(3) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(3) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (*e.g.*, vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (*e.g.*, roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

(2) *Operations Plan and Sector Contract.* Each Sector must submit an Operations Plan and Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The following elements must be contained in either the Operations Plan or Sector Contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(2)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and will solicit

public comment on the Operations Plan for at least 15 days, through notification of a proposed rulemaking in the **Federal Register**.

(2) Upon review of the public comments, the Regional Administrator may approve or disapprove Sector operations, through a final determination consistent with the Administrative Procedure Act.

(3) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of an compliance with the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(4) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at anytime if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking as prescribed by the Administrative Procedure Act.

(d) *Approved Sector allocation proposals*—(1) *GB Cod Hook Sector.* Eligible NE multispecies DAS vessels, as specified in paragraph (d)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner comply with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

(i) *GB Cod Hook Sector Area (GBCHSA).* The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. lat.	W. long.
HS1	70°00′	(1)
HS2	70°00′	42°20′
HS3	67°18.4′	42°20′ [3]
Follow the U.S. EEZ boundary south to HS3.		
HS3	66°45.5′	39°00′
HS4	71°40′	39°00′
HS5	71°40′	(2)

[1] The east facing shoreline of Cape Cod, MA.
[2] The south facing shoreline of Rhode Island.
[3] (the U.S. Canada Maritime Boundary).

(ii) *Eligibility.* All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear.

(iii) *TAC allocation.* For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, when fishing with jigs, demersal longline, or handgear, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements.* A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

(2) [Reserved]

■ 17. Section 648.88 is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit.* A vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated NE multispecies permit.* A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of

fishing specified in § 648.80 and any other applicable provisions of this part.

■ 18. Section 648.89 is revised to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	22 (58.4 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Cod possession restrictions*—(1) *Recreational fishing vessels.* (i) Each person on a private recreational vessel may possess no more than 10 cod per day, in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Each person on the vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) With the exception of tuna, fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not use any NE multispecies DAS during the period of participation.

■ 19. Section 648.90 is revised to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) NE multispecies—(1) *NE Multispecies annual SAFE Report.* The NE Multispecies Plan Development

Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; and designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the PDT, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(1)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi)

of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species.*—(1) *Annual review.* The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(iv) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(v) If the Council submits, on or before January 7, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(2) [Reserved]

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the

following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting TACs and DAS*. The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts*. The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation*. After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action*. If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System*. (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the **Federal Register** requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the **Federal Register** and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances

under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the **Federal Register**.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the **Federal Register**. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

■ 20. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(ii) Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(d) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(iii) *Category C and D vessels that lease NE multispecies DAS.* (A) A monkfish Category C or D vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS—37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

■ 21. In § 648.94, paragraph (f) is revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 7 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

* * * * *

■ 22. In § 648.322, paragraph (b)(6) is revised to read as follows:

§ 648.322 Skate possession and landing restrictions.

* * * * *

(b) * * *

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

* * * * *

[FR Doc. 04–8884 Filed 4–16–04; 12:08 pm]

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Federal Register

Tuesday,
April 27, 2004

Part III

Department of Labor

48 CFR Part 2901, et al.

Revision to the Department of Labor Acquisition Regulations; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

48 CFR Parts 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 2943, 2944, 2945, 2946, 2947, 2948, 2949, 2950, 2951, 2952, and 2953

RIN 1291–AA34

Revision to the Department of Labor Acquisition Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This document sets forth a revised Department of Labor Acquisition Regulation (DOLAR). The final rule reflects changes made to the proposed rules in response to the comments received during the comment period. The Department of Labor Acquisition Regulation implements and supplements the Federal Acquisition Regulation (FAR). The DOLAR was last revised in 1986, and is significantly out-of-date. The regulation has been substantially revised to: Update references to obsolete policies, procedures, and organizations; incorporate electronic links to references such as revised provisions of the FAR, U.S. Code, and the Code of Federal Regulations; incorporate Office of Federal Procurement Policy Letters and Executive Orders; and establish revised procedures that follow current established best practices. This final rule provides a definition for ''Agency Head'' which may not be consistent with the internal Department of Labor Manual Series (DLMS) Chapters 2–800 and 2–900 (establishing DOL procurement operating procedures and policies). The DLMS will be amended to comport with the definition in the DOLAR.

DATES: The effective date for this rule is May 27, 2004.

ADDRESSES: Jeffrey Saylor, Director, Division of Acquisition Management Services, 200 Constitution Ave., NW., Room S–1513, Washington, DC 20210–0001.

FOR FURTHER INFORMATION CONTACT: Lawrence Murphy, Procurement Analyst, Division of Acquisition Management Services, telephone (202) 693–7285 or by e-mail (*OASAM Regcomments@dol.gov*).

SUPPLEMENTARY INFORMATION: These comprehensive revisions to parts 2901 through 2954 incorporate changes to the language and structure of the regulations and also update provisions to correspond with the current Federal Acquisition Regulation and Department of Labor policies.

Comments on the Proposed Rules

We received one set of comments with fifteen elements from one member of the public.

Comment: Five of these comments suggested that the language be updated to reflect changes made in the Federal Acquisition Regulation since publication of the Notice of Proposed Rulemaking (NPRM) on August 15, 2003.

Response: Agree. We have made changes necessary to comply with Federal Acquisition Circulars (FAC): 2001–15, 2001–16, 2001–17, and 2001–18.

Comment: Three comments suggested that references to Web site addresses for GSA's Excluded Party Listing System and the U.S. Department of Energy's Alternative Fuels Data Center be updated to reflect new Internet addresses.

Response: Agree. The references to the Internet have been changed to reflect the current addresses for each Web site.

Comment: Two comments suggested that the Department state a preference for the Standard Form SF–30 in executing contract and purchase order modifications, and the SF–1449 for executing commercial purchases.

Response: Agree. The preference is so stated.

Comment: One comment noted that 2916.6 misquotes FAR 16.505 to include a $25,000 threshold for a fair opportunity to compete task orders instead of the micro-purchase threshold (currently $2,500).

Response: Agree. The reference has been corrected.

Comment: One comment noted that the reference to ''OFPP Policy Letter 93–1'' should note that the Policy Letter has been reissued.

Response: Agree. We have changed the reference to reflect the later date.

Comment: Two comments suggest that references in 2942.1502 and 2942.1503 reflect the Department of Labor's use of the National Institutes of Health's Past Performance Information Retrieval System (PPIRS) instead of the Contractor Performance System.

Response: Agree. The PPIRS is the e-gov system, which includes as a subsystem the NIH's Contractor Performance System. The reference has been corrected.

Comment: Finally, the commenter requested that additional clauses be incorporated into the DOLAR in order to reduce the proliferation of local clauses and to help DOL simplify its business processes.

Response: This comment was not accepted, as there has not been evidence of a ''proliferation of local clauses.'' This comment will be considered for future revisions to the DOLAR.

Congressional Review Act

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this final rule prior to the effective date set forth at the beginning of this document.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a ''significant economic impact on a substantial number of small entities'', an analysis shall be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. This rule revises and updates existing contracting procedures and does not make any major changes to the DOLAR that would have a significant economic impact on a substantial number of small businesses.

Executive Order 12866

This rule is considered by the Department of Labor to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Unfunded Reform Mandates Act of 1995

The Unfunded Reform Mandates Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector. The changes to the DOLAR made by this rule do not result in expenditures of this magnitude.

Paperwork Reduction Act

The changes to the DOLAR will not impose additional reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The DOL forms identified in 2953.1 are used for internal

review and are not public use documents.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This rule will not: result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: Federalism

The changes to the DOLAR will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects in 48 CFR Parts 2901 through 2953

Government procurement.

■ For the reasons stated in the preamble, the Department of Labor revises 48 CFR chapter 29, consisting of parts 2900 through 2953, to read as set forth below.

Signed at Washington, DC, this 9th day of April, 2004.

Elaine L. Chao,

Secretary of Labor.

CHAPTER 29—DEPARTMENT OF LABOR

General Structure and Subparts

(Parts 2900 to 2999)

Subchapter A—General

PART 2901—DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM

PART 2902—DEFINITIONS OF WORDS AND TERMS

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subchapter B—Acquisition Planning

PART 2904—ADMINISTRATIVE MATTERS

PART 2905—PUBLICIZING CONTRACT ACTIONS

PART 2906—COMPETITION REQUIREMENTS

PART 2907—ACQUISITION PLANNING

PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

PART 2909—CONTRACTOR QUALIFICATIONS

PART 2910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

PART 2911—DESCRIBING AGENCY NEEDS

PART 2912—ACQUISITION OF COMMERCIAL ITEMS

PART 2913—SIMPLIFIED ACQUISITION PROCEDURES

Subchapter C—Contracting Methods and Contract Types

PART 2914—SEALED BIDDING

PART 2915—CONTRACTING BY NEGOTIATION

PART 2916—TYPES OF CONTRACTS

PART 2917—SPECIAL CONTRACTING METHODS

Subchapter D—Socioeconomic Programs

PART 2918 [RESERVED]

PART 2919—SMALL BUSINESS PROGRAMS

PART 2920–2921 [RESERVED]

PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 2923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

PART 2924–2927 [RESERVED]

Subchapter E—General Contracting Requirements

PART 2928—BONDS AND INSURANCE

PART 2929—TAXES

PART 2930—COST ACCOUNTING STANDARDS

PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

PART 2932—CONTRACT FINANCING

PART 2933—PROTESTS, DISPUTES, AND APPEALS

PART 2934–2935 [RESERVED]

PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PART 2937—SERVICE CONTRACTING

PARTS 2938–2941 [RESERVED]

Subchapter G—Contract Management

PART 2942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

PART 2943—CONTRACT MODIFICATIONS

PART 2944—SUBCONTRACTING POLICIES AND PROCEDURES

PART 2945—GOVERNMENT PROPERTY

PARTS 2946–2951 [RESERVED]

Subchapter H—Clauses And Forms

PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 2953—FORMS

SUBCHAPTER A—General

PART 2901—DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM

Subpart 2901.0—Scope of Subpart

Sec.
2901.001 Scope of subpart.

Subpart 2901.1—Purpose, Authority, Issuance

2901.101 Purpose.
2901.103 Authority.
2901.105–2 Arrangement of regulations.
2901.105–3 Copies.

Subpart 2901.2—Administration

2901.201–1 Maintenance of the FAR.

Subpart 2901.3—Agency Acquisition Regulations

2901.302 Limitations.
2901.304 Agency control and compliance procedures.

Subpart 2901.4—Deviations From the FAR and DOLAR

2901.403 Individual deviations from the FAR.
2901.404 Class deviations.
2901.405 Deviations pertaining to treaties and executive agreements.

Subpart 2901.6—Career Development, Contracting Authority, and Responsibilities

2901.601 General.
2901.602 Contracting officers.
2901.602–1 Authority.
2901.602–3 Ratification of unauthorized commitments.
2901.603 Selection, appointment, and termination of Appointment.
2901.603–1 General.
2901.603–3 Appointment.
2901.603–4 Terminations.
2901.603–70 Responsibility of other government personnel.
2901.603–71 Contracting officer's technical representatives (COTR).
2901.603–72 Administrative procurement management reviews.

Subpart 2901.7—Determinations and Findings

2901.707 Signatory authority.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

PART 2901—DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM.

Subpart 2901.0—Scope of Subpart

2901.001 Scope of part.

This chapter may be referred to as the Department of Labor Acquisition Regulation or the DOLAR. This subpart sets forth introductory information about the Department of Labor Acquisition Regulation. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

Subpart 2901.1—Purpose, Authority, Issuance

2901.101 Purpose.

(a) Chapter 29, Department of Labor Acquisition Regulation, is established within Title 48 of the Federal Acquisition Regulation System of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document, as it must be used in conjunction with the FAR.

2901.103 Authority.

The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary for Administration and Management under Secretary's Order 4–76 in accordance with FAR 1.301(d)(3).

2901.105–2 Arrangement of regulations.

(a) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR is numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented, except that the section or subsection being implemented is preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR l.105–l is shown as 290l.105–1 and the DOLAR implementation of FAR subpart 24.1 is shown as DOLAR subpart 2924.1. Material which supplements the FAR is assigned the subsection numbers 70 and up. For example, the DOL regulation governing appointment and termination of contracting officers' technical representatives is identified as 2901.603–71.

(b) References to FAR materials within the DOLAR will include the acronym FAR and the identifying number, for example, FAR l.104–2(c)(2). References to DOLAR materials within the DOLAR simply cite the identifying number, for example, 2901.104–2(c)(2).

2901.105–3 Copies.

Copies of the DOLAR published in the **Federal Register**, CD–ROM, or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, or from the Government Printing Office Web Page, *http://www.gpo.gov/*. Requests should reference the DOLAR as chapter 29 of title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed. Additional information on DOL may be obtained on the Internet at *www.dol.gov*. Other DOL procurement policy documents referenced within the DOLAR may be available when appropriate by mail from the Division of Acquisition Management Services.

Subpart 2901.2—Administration

2901.201–1 Maintenance of the FAR.

A member of the Division of Acquisition Management Services (DAMS), an organization within the Office of Acquisition and Management Support Services, the Business Operations Center, Office of the Assistant Secretary for Administration and Management (OASAM), represents the Department of Labor on the Civilian Agency Acquisition Council (CAAC). DAMS will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

Subpart 2901.3—Agency Acquisition Regulations

2901.302 Limitations.

DOLAR System issuances are limited to published, codified, Department-wide regulations, which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department.

2901.304 Agency control and compliance procedures.

(a) The DOLAR is under the direct oversight and control of the Department's Senior Procurement Executive. Procedures for review and approval of issuances under the DOLAR System comply with FAR subparts 1.3 and 1.4. These procedures are contained in subpart 2901.6.

(b) DOLAR issuances shall comply with the restrictions in FAR 1.304(b).

(c) Heads of Contracting Activity (HCAs) must submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, DAMS. In conjunction with the Office of the Solicitor, DAMS will review all issuances whether or not they will be published in the **Federal Register** as a part of the DOLAR System. In the case of internal procurement policy instructions, the purpose of the review is to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued under the DOLAR.

Subpart 2901.4—Deviations From the FAR and DOLAR

2901.403 Individual deviations from the FAR.

(a) The Senior Procurement Executive is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions, which affect only one contracting action, unless FAR 1.405(e) is applicable. Requests for deviations shall be submitted through the Director, DAMS.

(b) Requests for deviations under paragraph (a) of this section must be submitted by the HCA and include justification as to why the deviation is required.

(c) A copy of the approved deviation must be included in the contract file.

2901.404 Class deviations.

(a) The Senior Procurement Executive is authorized to approve class deviations from FAR or DOLAR provisions which affect more than one contracting action, unless FAR 1.405(e) is applicable. The request for deviation is submitted through the Director, DAMS.

(b) Requests for deviations under paragraph (a) of this section must be submitted by the HCA and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) For a FAR class deviation the Director, DAMS will consult with the Chair of the CAAC, as required in FAR 1.404(a)(1), before authorizing the deviation.

(d) A copy of the approved class deviation must be included in each contract file.

(e) Recommended revisions to the FAR and a copy of each approved class FAR deviation will be transmitted to the FAR Secretariat by the Director, DAMS as required in FAR 1.404.

2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, DAMS is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405(d).

(b) For deviations not authorized by FAR 1.405(b) or (c), the Director, DAMS, will process the request for deviation through the FAR Secretariat.

Subpart 2901.6—Career Development, Contracting Authority, and Responsibilities

2901.601 General.

(a) This section deals with contracting authority and responsibilities of the head of the agency as described in 2902.1, FAR subpart 1.6 and this subpart.

(1) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the Assistant Secretary for Administration and Management.

(2) The Assistant Secretary for Administration and Management may delegate contracting authority to a bureau or agency within the Department of Labor as he/she delineates in writing.

(b) The Assistant Secretary for Administration and Management, acting through the Senior Procurement Executive, may delegate additional procurement authority subject to the issuance of warrants by the Senior Procurement Executive, and reserves the right to rescind any acquisition authority, if it is determined that such action is in the best interest of the Government.

2901.602 Contracting officers.

2901.602–1 Authority.

Contracting warrants, at all levels above the micro-purchase threshold, must be requested by the HCA in writing and signed by the Senior Procurement Executive. Warrants may be accompanied by letters of appointment that may provide requirements for maintaining the warrant (*e.g.*, maintaining current documentation for the FAR, DOLAR, and other guidance, and recurrent training). Copies of the appointment shall be maintained in the Division of Acquisition Management Services. Contracting officers must display the original warrant (and its limitations) in their workspace. A listing of current contracting officers may be available for review on the Internet at *http://www.dol.gov/oasam/grants/prgms.htm*. To modify a contracting officer's authority, the present appointment must be revoked and a new certificate issued.

2901.602–3 Ratification of unauthorized commitments.

(a) If the HCA agrees that the commitment appears to be without valid authorization, the Division of Acquisition Management Services must be notified by the HCA in accordance with the procedures outlined in this section.

(b) *Ratifications—Thresholds.* The Department of Labor may only ratify acquisitions that were intended to fulfill a bona fide need and otherwise could have been authorized when made. If the action to be ratified is not approved, then the employee who authorized the work may be liable for the entire cost of the action. Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

Dollar threshold	Must be approved by (Ratifying official)	Steps to be followed
Below the micro-purchase threshold	Head of the Contracting Office	1 through 5 & 7.
Between the micropurchase threshold and the Simplified Acquisition Threshold.	Head of Contracting Activity	1 through 5 & 7.
Above the Simplified Acquisition Threshold	Assistant Secretary for Administration and Management, after review by the Procurement Review Board.	1 through 7.

Note: DOL procurement policies require review by the Procurement Review Board of advisory and assistance services acquisitions above $50,000 for competitive acquisitions and at any dollar amount for noncompetitive acquisitions, and waivers for contracts with employees and recently separated employees. Therefore, review by the PRB is required for unauthorized obligations at these lower thresholds.

Step—Instruction

(1) The individual is placed on notice by the contracting officer, in writing, that the purchase may be inappropriate because he did not have a purchasing request, funding, or authority to obligate the Government to make an expenditure of funds.

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of the facts, including, but not limited to a statement as to why the acquisition office was not used, a description of work to be performed or products to be furnished, an estimated or agreed-upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance.

(ii) In the absence of such an individual, the head of the applicable office will be responsible for providing such information, including an explanation of why the individual who made the unauthorized commitment is unavailable to provide this information.

(2) The individual who made the unauthorized commitment or the head of the applicable office, as appropriate, shall provide a determination and finding (See FAR 1.704) to the contracting officer indicating that:

(i) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(ii) A procurement request and/or accompanying documentation including a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the source was selected, lists other sources considered, describes the work,

and estimates or states the agreed upon price. (If the DOL employee who made the unauthorized commitment is no longer available, appropriate program personnel must provide the information described in this paragraph); and

(iii) Funds are available and were available at the time of the unauthorized commitment.

(3) The contracting officer reviewing the unauthorized commitment shall determine whether the price is fair and reasonable and if payment is recommended to the ratifying official. (The contracting officer may rely upon written documentation submitted by managing staff above the individual who made the unauthorized commitment, in making his/her determination.)

(4) Legal review is required before ratification by the ratifying official.

(5) The ratifying official shall make an affirmative determination and finding that:

(i) The resulting purchase order or contract would otherwise have been proper if made by an appropriate contracting officer.

(ii) The contracting officer reviewing the unauthorized commitment has determined that the price is fair and reasonable and payment is recommended.

(6) For cases over the simplified acquisition threshold, all documentation for steps (1) through (5) must be forwarded to the Director, Division of Acquisition Management Services, for submission to the Procurement Review Board. However, the ratifying official is responsible for directing the receipt and acceptance for all products and deliverables received by the Government as a result of an unauthorized commitment.

(7) The supervisor of the individual who made the unauthorized commitment shall prepare a corrective action plan to preclude further unauthorized commitments (*e.g.*, ethics, purchase card, or administrative procedures training, or other appropriate action). The ratifying official may approve the corrective action plan. The individual shall report to the ratifying official in writing when the corrective action has been initiated and again after it has been fully implemented.

2901.603 Selection, appointment, and termination of appointment.

2901.603–1 General.

(a) The Senior Procurement Executive will develop and manage an acquisition career management program for contracting personnel. Training requirements must conform to Office of Federal Procurement Policy Letters 92–3, 97–01, and the Federal Acquisition Institute's curriculum. These references are available at:

http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL97–01.html,
http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL92–3.html,
and through the Federal Acquisition Institute (FAI) at:
http://www.faionline.com/fai/campus/index4.htm.

(b) The program must cover all contracting personnel in the following categories:

(1) *General Schedule (GS–1102) Contracting Series* (See also FAR 1.603);

(2) Contracting officers, regardless of General Schedule Series, with contracting authority above the simplified acquisition threshold;

(3) Purchasing Series (GS–1105), other individuals performing purchasing duties and individuals with contracting authority between the micro-purchase and simplified acquisition thresholds.

(4) All Contracting Officer Technical Representatives as identified in 2901.603–71.

2901.603–3 Appointment.

General. In accordance with FAR 1.603–3, appointments will be made in writing on an SF 1402 for all warrants above the micro-purchase threshold. In addition, appointments may be made for specific functions unrelated to dollar threshold, such as indirect cost negotiation, debt management, and closeout functions.

(a) *Purchase Cards (micro-purchase threshold).* Purchase cardholders will be appointed in accordance with the DOL Guidelines for Purchase Card Use and the Agency/Office procedures approved by the HCA. Agency/Organization Purchase Card Coordinators requesting issuance of a purchase card must be responsible for ensuring that the purchase cardholder has taken an orientation course before issuance and/or use of the purchase card. A list of purchase cardholders is available at: *http://www.dol.gov/oasam/foia/hotfoia/citibank-list.htm.*

(b) *Simplified Acquisition Threshold (currently $100,000).* The HCA may request a delegation of procurement authority not to exceed the simplified acquisition threshold based on education, training, and experience in the acquisition field. Effective July 26, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

(c) *$500,000.* The HCA may request a delegation of procurement authority not to exceed $500,000 based on the individual's education, training and experience in contracting. Although primarily reserved for those in the GS–1102 series, the HCA may consider business acumen, education, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

(d) *Unlimited.* The HCA may request a delegation of procurement authority on an unlimited basis for individuals whose education, training, and experience in contracting warrant such authority. Although primarily reserved for those in the GS–1102 series, the HCA may consider length of service, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

2901.603–4 Terminations.

Termination of a contracting officer's appointment will be made in writing unless the warrant contains the basis for the termination (*i.e.*, retirement, reassignment). Terminations may be immediate, but must not operate retroactively.

2901.603–70 Responsibility of other government personnel.

(a) Only DOL personnel with contracting authority shall obligate DOL to any type of contractual obligation and only to the extent of their delegated authority. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for determining agency needs should maintain a close and continuous relationship with their contracting officer to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority or insufficient contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, DOL personnel who must use the contracting process to accomplish

their programs must support the contracting officer to ensure that:

(1) Requirements are clearly defined and specified without being overly restrictive in accordance with FAR 11.002;

(2) Competitive sources are solicited, evaluated, and selected as appropriate;

(3) The FAR and the Competition in Contracting Act requirements for full and open competition are satisfied to the maximum extent practicable. Sole source purchases may only be permitted in accordance with FAR Subpart 6.3 or other applicable provisions of the FAR (*e.g.* FAR Part 8) or federal law;

(4) Quality standards are prescribed, and met;

(5) Performance or delivery is timely;

(6) Files are documented to substantiate the judgments, decisions, and actions taken, including compliance with paragraphs (c)(2) and (3) of this section;

(7) Requirements are written so as to encourage competition and to comply with regulations and federal policy for meeting acquisition goals such as performance-based contracting, HUBZone contractors, *etc.* The contracting officer will identify these programs to the program office.

2901.603–71 Contracting Officer's Technical Representatives (COTR).

(a) At the time a COTR is to become responsible for a contract, task order, or delivery order, the contracting officer must issue a written letter of delegation informing the individual by name of his or her authority, including a delineation of applicable limitations and responsibilities. This applies to contracts awarded by the Department of Labor and those awarded by other agencies, such as Federal Supply Schedule Contracts or Economy Act transactions. Only the contracting officer cognizant of the contract action may make a COTR delegation. However, a contracting officer at any level above the cognizant contracting officer may sign the delegation letter, following his or her determination of its accuracy, completeness, and sufficiency.

(b) The functions of a COTR typically may include such actions as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Government-furnished property, reviewing and approving and/or recommending to the contracting officer approval/disapproval of vouchers/invoices, *etc.* An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (*i.e.*, COTR duties may not be delegated to a position) and has no authority to exceed them.

(c) Contracting officers may not delegate to the COTR the following authorities:

(1) The authority to issue task or delivery orders against a contract or any of the agreements defined under FAR 16.7;

(2) The authority to change any of the terms and conditions of a contract or any of the agreements defined under FAR 16.7;

(3) The authority to sign contracts or contract modifications;

(4) The authority to write letters to the contractor that will affect the cost or schedule of the contract. The authority to otherwise write letters to a contractor must require the COTR to send a copy of the letters to the contracting officer for the contract file;

(5) The authority to approve contractors' final invoices under cost-reimbursement contracts. However, the COTR must make a final payment recommendation to the contracting officer; or

(6) The authority to commit the Government to any adjustments to the price or cost of the contract or order (*e.g.*, the contracting officer must sign all pre-negotiation and price negotiation memoranda including those which may be combined into one document for those adjustments valued at $100,000 or less).

(d) The contracting officer's delegation must include the admonition that the COTR may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments must not be delegated through a COTR designation or by any means other than a contracting officer warrant.

(e) The contractor must be notified of the COTR designation in writing and a copy of the COTR letter of appointment also must be provided to the contractor. The contracting officer must provide the COTR with a copy of the COTR designation notification that was sent to the contractor.

(f) The letter delegating COTR authority must include the contract number, and must include the following information, at a minimum:

(1) Contracting officer's and contract specialist's/administrator's name and telephone number;

(2) COTR's specific authority and responsibilities;

(3) COTR's specific limitations, including the admonition that the COTR may be personally liable for unauthorized commitments;

(4) Detailed description of the types of files and the content of the files to be maintained by the COTR;

(5) Reference to meeting applicable requirements for ethics, procurement integrity, no conflict of interest, and proper standards of conduct, including a copy of FAR Part 3, and other regulations, statutes, or directives governing these topics (*e.g.*, 5 CFR Part 2635 Standards of Conduct);

(6) A requirement that the COTR acknowledge receipt and acceptance of the letter and return it to the contracting officer;

(7) A description of the training required and information on obtaining such training.

(g) *Applicability*. The eligibility requirements of this subpart must apply to all individuals who are designated by the contracting officer as COTRs.

(h) *Eligibility standards*. To be determined eligible for an appointment as a DOL COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course; and

(2) The candidate must attend a minimum of 1 hour of training specifically in procurement ethics, either through courses offered periodically by the Department of Labor, another federal agency's program, or a commercial vendor.

(i) *Limitations*. Effective May 27, 2004, each COTR appointment made by the contracting officer must clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(j) *Termination*. (1) Termination of the COTR's appointment must be made in writing by a contracting officer and must give the effective date of the termination. The contracting officer must promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(2) COTRs may be terminated for reasons (not an exhaustive listing) such as exceeding their authorities and limitations, conflicts of interest, unethical conduct, failure to perform, reassignment/resignation/retirement, and upon completion of the contract to which assigned.

(k) *Waivers*. No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the HCA may waive the training requirements and authorize the individual to perform the COTR duties.

2901.603–72 Administrative procurement management reviews.

(a) The Senior Procurement Executive is responsible for performing administrative procurement reviews for each procurement office in the Department of Labor, except the Office of the Inspector General (OIG). The purpose of these reviews is to audit internal controls to ensure compliance with established procurement law, regulations, policies, procedures and applicable directives. The reviews are to emphasize the development and improvement of managerial controls and best practices.

(b) The administrative procurement review system is a three-pronged approach that includes self-assessment, statistical data for validation, and flexible quality reviews and assessment techniques. This system is required to:

(1) Evaluate the effectiveness and efficiency of office acquisition systems;

(2) Assess the adequacy of policies, procedures and regulations governing the acquisition process; and

(3) Identify and implement changes necessary to improve the systems.

(c) The Senior Procurement Executive shall establish procurement review procedures, which will focus on:

(1) Conformance with policies of the FAR, DOLAR and the Department of Labor Manual Series 2–800 and 2–900.

(2) Conformance with federal reporting requirements for the Department of Labor.

(3) Understanding of new department-wide or government-wide initiatives (*e.g.*, E-Procurement).

(4) Government-wide procedures established by the Office of Management and Budget.

(d) HCAs are responsible for ensuring contracting activity compliance with law and regulations through the review and oversight process.

Subpart 2901.7—Determinations and Findings

2901.707 Signatory authority.

A class justification for other than full and open competition must be approved in writing by the same approval authority as for individual justifications in accordance with FAR 6.304(a). The approval level must be determined by the estimated total value of the class.

PART 2902—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 2.1—Definitions

2902.101 Definitions.

(a) Commonly used words and terms are defined in FAR subpart 2.1. This part 2902 gives DOL-specific meanings for some of these words and terms and defines other words and terms commonly used in the DOL acquisition process.

(b) The following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part:

Competition Advocate The Competition Advocate for the Department of Labor is appointed by the Assistant Secretary for Administration and Management and is defined in FAR 6.5 and 2906.5. If the appointee is recused from a procurement action, the Assistant Secretary for Administration and Management may designate another official to act in that capacity.

Contracting Activity means an agency or component office within the Department of Labor with specific responsibility for managing contract functions pursuant to one or more warrants signed by the Senior Procurement Executive (or the Office of the Inspector General for its contracting activity).

Contracting Officer's Technical Representative means the individual appointed by the contracting officer to represent the Department of Labor's programmatic interests on a Department of Labor contract, task order, or delivery order. This individual is responsible to the contracting officer for overseeing receipt and acceptance of goods/services by the Government, reporting on the contractor's performance, and approving/disapproving payment to the contractor. Authority is otherwise limited to giving technical direction to the contractor within the framework of the contract (see 2901.603–71). This position may go by other titles, such as: a technical point of contact (TPOC) or Contacting Officer's Representative (COR).

Head of Agency (also called agency head), for the FAR and DOLAR only, means the Assistant Secretary for Administration and Management; except that the Secretary of Labor is the Head of Agency for acquisition actions, which by the terms of a statute or delegation must be performed specifically by the Secretary of Labor; the Inspector General is the Head of Agency in all cases for the Office of the Inspector General. Authority to act as the Head of Agency has been delegated to the Assistant Secretary for Employment and Training and the Assistant Secretary for Mine Safety and Health for their respective agencies. For purposes of the Economy Act (determinations and interagency agreements under FAR 17.5) only, the Employee Benefits Security Administration, Employment Standards Administration, Women's Bureau, Office of the Solicitor, Bureau of Labor Statistics, Office of Disability Employment Policy, and the Occupational Safety and Health Administration are delegated contracting authority.

Head of Contracting Activity (HCA) means the official who has overall responsibility for managing the contracting activity, when the contracting activity has more than one person with a warrant issued by the Senior Procurement Executive. In the Department of Labor the following officials are the HCA for their respective organization:

(i) For the Mine Safety and Health Administration, the Director, Administration and Management, MSHA.

(ii) For the Employment and Training Administration, the Director, Office of Grants and Contract Management, ETA.

(iii) For the Office of the Inspector General, the Director, Division of Finance and Administration, OIG.

(iv) For the Bureau of Labor Statistics, the Director, Division of Administrative Services, BLS.

(v) For the Office of the Assistant Secretary for Administration and Management and all other agencies not listed in this definition, the Director, Business Operations Center, OASAM.

Senior Procurement Executive means the Deputy Assistant Secretary for Administration and Management as defined at FAR 2.101.

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2903.1—Safeguards

Sec.
2903.101 Standards of conduct.
2903.101–1 General.
2903.104 Procurement integrity.
2903.104–3 Definitions.
2903.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
2903.104–7 Violations or possible violations of standards of conduct.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.
2903.204 Treatment of violations.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.601 Policy.
2903.602 Exceptions.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 2903.1—Safeguards

2903.101 Standards of conduct.

2903.101–1 General.

The statutory prohibitions and their application to DOL personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635 and the supplemental DOL standards of conduct, 5 CFR part 5201. All DOL personnel involved in acquisitions must become familiar with these statutory prohibitions. Any questions concerning them must be referred to an Agency Ethics Official in the Office of the Solicitor. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). Any suspected violations must be reported promptly to the Office of the Inspector General.

2903.104 Procurement integrity.

2903.104–3 Definitions.

Agency ethics official means the Solicitor or the Associate Solicitor for Legislation and Legal Counsel.

2903.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(1) Personnel participating in technical evaluation panels (*i.e.*, source selection board) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to the Office of the Solicitor.

(6) Personnel assigned to the Department of Labor's Division of Cost Determination and the Defense Contract Audit Agency.

(7) Personnel assigned to the Division of Acquisition Management Services.

(8) Members of the Procurement Review Board.

(9) The Office of the Inspector General.

(10) Other Government employees authorized by the contracting officer.

(11) Supervisors, at any level, of the personnel listed in this paragraph (a).

(b) The originator of information that may be source selection information must consult with the contracting officer or the procurement officer, who must determine whether the information is source selection information. DOL personnel responsible for preparing source selection information as defined in FAR 2.101 must assure that the material is marked with the legend in FAR 3.104–4 at the time the material is prepared.

(c) Unless marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104–4,'' draft specifications, purchase descriptions, and statements of work could erroneously be released during a market survey in order to determine the capabilities of potential competitive sources (see FAR 7.1 and FAR 10).

2903.104–7 Violations or possible violations of standards of conduct.

(a) The Senior Procurement Executive is the individual designated to receive the contracting officer's report of violations.

(b) The HCA or designee must refer all information describing an actual or possible violation to the Associate Solicitor for Legislation and Legal Counsel, the Senior Procurement Executive, and Inspector General staff.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.

Contractor gratuities offered to Government personnel are subject to the restriction under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

2903.204 Treatment of violations.

Any suspected violations of FAR subpart 3.2 and the clause at FAR 52.203–3, Gratuities, must be reported to the Office of the Inspector General. The authority to determine whether a violation of the Gratuities clause by the contractor, its agent, or another representative, has occurred and the appropriate remedies are delegated to the HCA.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.601 Policy.

In addition to restrictions placed on current Federal government employees, 18 U.S.C. 207 places some restrictions on contracting with former officers, employees, and elected officials of the executive and legislative branches. Under these prohibitions, contracts with former employees are prohibited for a period of one year from the date of severance of duties, unless an exception is granted as set forth in 2903.602.

2903.602 Exceptions.

(a) In accordance with FAR 3.602, only when there is a most compelling reason to do so, is the Assistant Secretary for Administration and Management authorized to except a contract from the policy in FAR 3.601, after the Procurement Review Board and the agency ethics official have reviewed and recommended approval of the exception. However, when time does not permit, the Assistant Secretary for Administration and Management may unilaterally approve an exception. The exception and information supporting the exception must be provided to the contracting officer for their official records.

(b) When an exception under this subpart is requested, it is submitted through the director of the cognizant program office to the HCA. In the procurement request, the director must describe the basis for the exception from the restrictions of FAR 3.601.

(c) Except as allowed in paragraph (a) of this section, the Department of Labor may enter into a negotiated contract or an amendment to an existing contract

with former employees of DOL within one year of separation (or with firms in which former employees are known to have a substantial interest) only after review and recommendation for approval by the agency ethics official, the Procurement Review Board, and written approval by the Assistant Secretary for Administration and Management.

(d) Approval of a decision to grant an exception as provided in this section must be documented by a written findings and determination prepared by the requesting official for signature by the Assistant Secretary for Administration and Management. The determination and findings must document compliance with FAR 3.603, FAR 9.5 and DOLAR 2909.5; specify the compelling reason(s) for award; and be placed in the contract files and the files of the Policy Review Board.

PART 2904—ADMINISTRATIVE MATTERS

Subpart 2904.8—Government Contract Files

Sec.
2904.800–70 Contents of contract files.
Appendix A to Part 2904.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 2904.8—Government Contract Files

2904.800–70 Contents of contract files.

(a) The reports listed in appendix A to this part are applicable to the Department of Labor.

(b) HCAs must be responsible for establishing standard contract files for their contracting activities. The HCA must provide one or more representative contract files to the Director, Division of Acquisition Management Services, as requested for comment.

APPENDIX A TO PART 2904

Title of report	Reference	Date due	Submitted to
Report of Proposed Federal Construction*.	29 CFR 1.4	Annually; 20–Aug	ESA Davis Bacon.
Contractor Report of Government Property*.	FAR Chapter 45;	Annually; 31–Oct	Business Operations Center.
Major Preference Program Goals and Achievements Report*.	DLMS 2 1000	By the 20th of each month	Office of Small Business Programs.
A–76 & FAIR Act Inventory	FAIR ACT & OMB MEMO	June 30th of each year	Office of Competitive Sourcing.
SF 294, Subcontracting Report for Individual Contracts.	FAR Subpart 19.7;	Semi-annually;	Contracting Officer.
	SF 294	April 30; 30–Oct	Office of Small Business Programs.
SF 295, Summary Subcontract Report.	FAR Subpart 19.7;	Semi-annually March 30; September 30.	Contracting Officer.
Value Engineering Report*	OMB Circular A–131	Annually; 7–Dec	Office of Acquisition and Management Support Services.
Report on Federal Support to Universities, Colleges, and Non-profit Institutions.	Section 3(a)(7) of the National Science Foundation (NSF) Act.	Annually; O/A 15–May	Upon request From National Science Foundation.
Procurement Forecast Initial and Update.	Pub. L. 100–656;	Sept 15 (Init.) and Apr 15 (Update).	Division of Acquisition Management Services.

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period must be submitted to the requisitioning office.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2905—PUBLICIZING CONTRACT ACTIONS

Subpart 2905.1—Dissemination of Information

Sec.
2905.101 Methods of disseminating information.

Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

Subpart 2905.4—Release of Information

2905.402 General public.
2905.403 Requests from Members of Congress.
2905.404 Release procedures.

Subpart 2905.5—Paid Advertisements

2905.501 Scope.
2905.502 Authority.
2905.503 Procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2905.1—Dissemination of Information

2905.101 Methods of disseminating information.

Contracting officers may only use the Government Point of Entry (GPE) for synopsis and dissemination of information concerning procurement actions. The Division of Acquisition Management Services manages the DOL account.

Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

The Assistant Secretary for Administration and Management is authorized to make the determination prescribed in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable must be submitted by the HCA for appropriate action including communication with the officials listed in FAR 5.202(b).

Subpart 2905.4—Release Of Information

2905.402 General public.

(a) Unless the HCA determines that disclosure would be prejudicial to the interests of DOL, if a list of interested parties is collected in reference to a solicitation, it may be released upon request.

(b) Any request for release of information is subject to the Freedom of Information Act and FAR 24.2.

2905.403 Requests from Members of Congress.

All proposed responses to Congressional inquiries must be prepared and forwarded for coordination with the Office of the Solicitor and the Office of Congressional and Intergovernmental Affairs to determine whether circumstances exist that will allow the release of additional information. In such instances, the Congressional requestor must be furnished an interim reply providing the

information that is releasable. The interim reply must describe the problem that precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

2905.404 Release procedures.

HCAs are authorized to release long-range acquisition estimates under the conditions in FAR 5.404–1.

Subpart 2905.5—Paid Advertisements

2905.501 Scope.

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, and 44 U.S.C. 3701, 3702, and 3703.

2905.502 Authority.

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication may be obtained from the HCA or designee.

2905.503 Procedures.

(a) Prior to obtaining HCA approval, an agency should seek legal review to determine whether it has appropriate legal authority for advertising. The HCA exercising the authority delegated by 2905.502 must do so in accordance with the procedures set forth in FAR 5.503 and those in this section.

(b) Requests for procurement of advertising must be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

PART 2906—COMPETITION REQUIREMENTS

Subpart 2906.3—Other Than Full and Open Competition

Sec.
2906.301 Policy.
2906.303 Justifications.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2906.3—Other Than Full and Open Competition

2906.301 Policy.

(a) Department of Labor acquisitions must comply with the Department of Labor Manual Series (DLMS) 2, Chapter 830 (available by mail from the Director, Division of Acquisition Management Services, 200 Constitution Ave., NW., Washington, DC 20210–0001), or electronically from *http://www.dol.gov/oasam/programs/boc/prb.htm*. Any proposed noncompetitive acquisition in excess of the simplified acquisition threshold must be fully justified and, if required by the DLMS, submitted to the DOL Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research and development contracts, also by the Assistant Secretary for Policy.

(b) With the exception of contracts for advisory and assistance services or for research and development, the contracting officer has the authority below the simplified acquisition threshold to approve sole source contracts. The contracting officer is responsible for assuring that proposed acquisitions below the simplified acquisition threshold are in compliance with FAR and DOLAR requirements regarding competition.

2906.303 Justifications.

The authority of the agency head to determine that only specified make and models of technical equipment will satisfy the agency's need under FAR 6.302–1 is delegated to the HCA.

Subpart 2906.5—Competition Advocate

2906.501 Requirement.

The Assistant Secretary for Administration and Management must appoint a Competition Advocate for the Department of Labor. The appointment will be predicated on an understanding of the competition requirements in the FAR, and particularly small business programs.

PART 2907—ACQUISITION PLANNING

Subpart 2907.1—Acquisition Plans

Sec.
2907.105 Contents of written acquisition plans.
2907.107 Additional requirements for acquisitions involving bundling.

Subpart 2907.3—Contractor Versus Government Performance

02907.300 Availability of inventory.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2907.1—Acquisition Plans

2907.105 Contents of written acquisition plans.

The Department of Labor has implemented its acquisition planning system in compliance with FAR 7.1 and internal procedures provided in DLMS 2 section 834. The annual forecast is available for review from: *http://www.apps.dol.gov/contract_grant/index.htm*.

2907.107 Additional requirements for acquisitions involving bundling.

The FAR requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contracts, or other indefinite-delivery contracts if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

Subpart 2907.3—Contractor Versus Government Performance

2907.300 Availability of inventory.

The Department of Labor's FAIR Act inventory of commercial activities performed by federal employees and inherently governmental functions may be accessed on the Internet at: *www.dol.gov* under ''Doing Business with DOL''.

PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2908.4—Federal Supply Schedules

Sec.
2908.404 Using schedules.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2908.4—Federal Supply Schedules

2908.404 Using schedules.

Small business considerations, procedures regarding both prime and subcontracting, and clearances specified in DOLAR 2919 apply to GSA Federal Supply Schedule Orders above the simplified acquisition threshold. Procedures to be followed may be modified by the Office of Small Business Program as appropriate in order to comply with GSA Federal Supply Schedule procedures (*e.g.*, first tier contracts may be required to report their commercial subcontracting goals to the DOL Office of Small Business Programs).

PART 2909—CONTRACTOR QUALIFICATIONS

Subpart 2909.1—Responsible Prospective Contractors

Sec.
2909.105 Procedures.

Subpart 2909.4—Debarment, Suspension, And Ineligibility

2909.402 Policy.
2909.405 Effect of listing.
2909.405–1 Continuation of current contracts.
2909.406 Debarment.
2909.406–1 General.
2909.406–3 Procedures.
2906.407 Suspension.

2909.407–1 General.

Subpart 2909.5—Organizational and Consultant Conflicts of Interest

2909.503 Waiver.
2909.506 Procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2909.1—Responsible Prospective Contractors

2909.105 Procedures.

Before awarding a contract, the contracting officer must make a written determination of the otherwise successful bidder's/offeror's responsibility in accordance with FAR 9.105. In addition to past performance information, the contracting officer must insure that the proposed contractor, and any subcontractor representing more than $25,000 in goods or services, does not appear in the ''List of Parties Excluded from Federal Procurement'' (available on the Internet at *www.epls.gov*). In addition, contracting officers should base their determination of contractor responsibility on a review of the company's ''Summary or Financial Report'' from Dun & Bradstreet (available on the Internet for a fee at *http://www.dnb.com/*).

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.402 Policy.

(a) This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list. This subpart does not apply to Department of Labor debarments or suspensions issued for Davis-Bacon Act and Davis-Bacon Related Act violations, Service Contract Act violations, Affirmative Action/Equal Employment Opportunity violations, or violations under other statutes administered by the Department of Labor.

(b) *Contracting activity officials shall have the following responsibilities.* (1) Heads of contracting activity (HCA) shall:

(i) Provide an effective system to ensure that contracting staffs consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' at *http://epls.arnet.gov/* before soliciting offers, awarding or extending contracts, or consenting to subcontract.

(ii) Consider debarment or suspension of a contractor when cause, as defined under FAR 9.406–2 for debarment and FAR 9.407–2 for suspension, is shown. Contracting officers should consult with their appropriate legal counsel before making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination is subject to reconsideration if warranted by new information.

(iii) When the decision is made to initiate debarment and/or suspension of a contractor, the Senior Procurement Executive must prepare a notice in accordance with FAR 9.406–3(c) or FAR 9.407–3(c). The draft notice, along with the administrative file containing all relevant facts and analysis, must be forwarded to the Senior Procurement Executive, as the debarring and suspending official, following review by the activity's legal counsel.

(2) The Senior Procurement Executive shall:

(i) Review the notice and administrative file for sufficiency and provide for review by other DOL officials as considered appropriate;

(ii) In accordance with FAR 9.406–3(c) or FAR 9.407–3(c), if it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension;

(iii) Direct additional fact-finding as necessary when material facts are in dispute;

(iv) Notify the contractor and any affiliates involved of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406–3(c) and FAR 9.407–3(c);

(v) Be responsible for accomplishing the actions required in FAR 9.404(c) within five working days after debarring or suspending a contractor or modifying or rescinding such an action;

(vi) Maintain Department-wide records of debarred or suspended contractors in accordance with FAR 9.404.

2909.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies must not solicit offers from, award contracts to, or consent to subcontract with these organizations, unless the HCA determines in writing that there is a compelling reason for such action and the Assistant Secretary for Administration and Management approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids must be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a compelling reason to consider the bid and the Assistant Secretary for Administration and Management approves such action.

(c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the Assistant Secretary for Administration and Management approves such action.

2909.405–1 Continuation of current contracts.

(a) At the time an option is being exercised, contracting officers must review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If a contractor or significant subcontractor is identified in the listing, the contracting officer must make a written determination either to proceed or to terminate the contract, and must explain the rationale for the decision. In accordance with FAR 9.405–1, contracting officers may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred, unless it is determined that termination of the contract is in the best interest of the Government. The contracting officer must make such determination in writing, after consulting with the contracting officer's technical representative and legal counsel. The determination must be approved by the HCA.

(b) Contracting activities must not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the Assistant Secretary for Administration and Management approves such action.

2909.406 Debarment.

2909.406–1 General.

(a) The Senior Procurement Executive is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406–2, using the procedures in 2909.406–3.

(b) The Senior Procurement Executive is authorized to make an exception regarding debarment by another agency debarring official in accordance with the conditions in FAR 9.406–1(c).

2909.406–3 Procedures.

(a) *Investigation and referral.* Whenever a DOL employee knows a

cause for debarment, as listed in FAR 9.406–2, the appropriate HCA affected must be notified. The contracting officer must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for debarment to the Senior Procurement Executive.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Senior Procurement Executive must initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406–3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at an informal fact-finding proceeding as required by FAR 9.406–3(b)(2)(i). The proceeding must be conducted by the Office of Administrative Law Judges and must be held at a date and location reasonably convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, entitled ''Rules Of Practice And Procedure For Administrative Hearings Before The Office Of Administrative Law Judges'', the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings must be made available to the contractor under the conditions in FAR 9.406–3(b)(2)(ii).

(d) *Decision and notice.* The Senior Procurement Executive shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406–3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406–4 and 9.406–5. Notice of the decision must be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406–3(e).

2909.407 Suspension.

(a) The Senior Procurement Executive is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407–2, using the procedures in 2909.406–3.

(b) The Senior Procurement Executive is authorized to make an exception, regarding suspension by another agency suspending official under the conditions in FAR 9.407–1(d).

2909.407–1 General.

(a) *Investigation and referral.* Whenever a DOL employee knows of a cause for suspension, as listed in FAR 9.407–2, the appropriate HCA affected must be notified. The HCA must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for suspension, to the Senior Procurement Executive.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Senior Procurement Executive will initiate suspension by taking the actions listed in FAR 9.407–3(c) and advising the contractor of DOL's rules under this subpart.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407–3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at informal proceedings, as required by FAR 9.407–3(b)(2)(i). Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed suspension.

(d) *Suspension decisions.* The Senior Procurement Executive must make a final decision on suspension as prescribed in FAR 9.407–3(d). Notice of the decision must be provided to the contractor and any affiliates involved, in accordance with the provisions in FAR 9.407–3(d)(4).

Subpart 2909.5—Organizational and Consultant Conflicts of Interest

2909.503 Waiver.

(a) The Senior Procurement Executive is delegated authority by the Assistant Secretary for Administration and Management to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's best interest.

(b) Requests for waivers must be made by the HCA to the PE. Each request must include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR 9.5 to be waived.

(c) In making determinations under this subpart the Senior Procurement Executive must request the opinion of the Office of the Solicitor, Division of Legislation and Legal Counsel.

2909.506 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest and requests higher level review as referred to in FAR 9.506, the matter must be referred to the Office of the Solicitor, Associate Solicitor for Legislation and Legal Counsel, and the Director, Division of Acquisition Management Services.

(b) Referrals must be made by the HCA concerned and include the contracting officer's decision and the position of the prospective contractor.

PART 2910—MARKET RESEARCH

Sec.
2910.002 Procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2910.002 Procedures.

(a) In accordance with FAR 6.302–1(c), purchase descriptions must not specify a product, or specific feature of a product, peculiar to a manufacturer unless they are justified to the contracting officer in writing by the office initiating the purchase request. The justification must state that the product, or specific product feature, is essential to the Government's requirements and other similar products or features will not meet these requirements. This determination must be signed by a representative of the office originating the request and must accompany the purchase requisition submitted to the appropriate contracting office. If such a justification is not made, the contracting officer may assume that another make and model or a generic product could equally meet the DOL requirement.

(b) In accordance with FAR 10.002(b), the requisitioning office must submit to the contracting officer information demonstrating that a variety of products from various commercial sources have been considered. This requirement is not necessary for required sources (See FAR 8.001). Orders to be placed against non-mandatory sources, such as the Federal Supply Schedules, or other Governmentwide Acquisition Contracts, should include product information concerning multiple sources based on research from *www.contractdirectory.gov* site or other

sources. When documented in this manner, the contracting officer may rely on this information in developing a procurement strategy, or for documenting the comparison of catalogs or pricelists.

PART 2911—DESCRIBING AGENCY NEEDS

Subpart 2911.1—Selecting And Developing Requirements Documents

Sec.
2911.103 Market acceptance.

Subpart 2911.5—Liquidated Damages

2911.501 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2911.1—Selecting And Developing Requirements Documents

2911.103 Market acceptance.

The authority of the Head of an Agency under FAR 11.103(a), to require offerors to demonstrate that the items offered have either achieved commercial market acceptance or been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements, and otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation, is delegated to the HCA.

Subpart 2911.5—Liquidated Damages

2911.501 Policy.

In accordance with FAR 11.501(d), the authority of the Head of Agency to recommend to the Department of Treasury, Commissioner, Financial Management Services, that the amount of a contractor's liquidated damages be waived or reduced in whole or in part, is delegated to the HCA.

PART 2912—ACQUISITION OF COMMERCIAL ITEMS

Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

In accordance with FAR 12.302(c), a request for waiver to tailor terms inconsistent with customary commercial practice must be documented in a written justification by the contracting officer, and may be approved by the HCA on an individual or class basis.

PART 2913—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2913.1—Procedures

Sec.
2913.106–3 Soliciting competition, evaluation of quotations or offers, award and documentation.

Subpart 2913.2—Actions At Or Below The Micro-Purchase Threshold

2913.201 General.

Subpart 2913.3—Simplified Acquisition Methods

2913.301 Governmentwide commercial purchase card.
2913.307 Forms.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2913.1—Procedures

2913.106–3 Soliciting competition, evaluation of quotations or offers, award and documentation.

In accordance with FAR 13.106–3(b), simplified acquisition files must contain documentation of the factors considered in making an award in excess of the micro-purchase threshold. When other than the lowest responsive quotation from a responsible supplier is used as the basis for a purchase, the contracting officer must identify the basis (*i.e.*, best value) of the award and include in the purchase file documentation of the reasons for rejecting any lower quotation and the name of the individual responsible for making the determination to award to other than the lowest priced quotation. The contracting officer has broad discretion in determining the award of a purchase order, which may be based on the factors listed in FAR 13.106–3. This requirement does not necessitate a separate determination if the procurement file contains preprinted standardized classifications for award.

Subpart 2913.2—Actions at or Below the Micro-Purchase Threshold

2913.201 General.

The Government commercial purchase card must be used in preference to other methods of procurement for purchases up to the micro-purchase threshold. Other small purchase methods (blanket purchase agreements, third party drafts, and purchase orders) may be used in lieu of the Government purchase card when it is more cost-effective or practicable.

Subpart 2913.3—Simplified Acquisition Methods

2913.301 Governmentwide commercial purchase card.

(a) The Government purchase card has far fewer requirements for documentation than other methods of purchasing. However, the same legal restrictions apply to credit card purchases that apply to other purchases using appropriated funds. If a purchase cardholder has questions about the lawfulness of a particular purchase, he or she must initially consult his or her appropriate office purchase card administrator, who will consult the Office of the Solicitor as necessary.

(b) GAO decisions surrounding the concept of the ''availability of appropriations'' are often stated in terms of whether appropriated funds are or are not ''legally available'' for a given expenditure. Restrictions on the purposes for which appropriated funds may be used come from a variety of sources, including the DOL Appropriations Acts, and decisions of the Comptroller General and his predecessor, the Comptroller of the Treasury.

(c) HCAs, administrative officers, and contracting officers are encouraged to review the GAO publication entitled Principles of Federal Appropriations Law. This document must be consulted when developing Office/Agency Purchase/Credit Card Program procedures. A number of the more common restrictions which ''accounting officers of the Government'' have had frequent occasion to consider and apply include, for example:

(1) Payment of attorney's fees;

(2) Purchase of food, entertainment or recreation;

(3) Payment of personal membership fees; and

(4) Payment of personal expense items such as gifts for employees, and entry fees for contests.

2913.307 Forms.

(a) In accordance with FAR 13.307, contracting officers are encouraged to use the Standard Form (SF) SF–1449, when executing commercial acquisitions. Agencies may use forms other than the SF–1449 and may print on those forms the clauses considered to be suitable for these purchases. In these instances, alternate forms should conform with the Standard Form to the maximum extent practicable.

(b) The SF–30 is to be used to modify a purchase order.

PART 2914—SEALED BIDDING

Subpart 2914.4—Opening of Bids and Award of Contract

Sec.
2914.404–1 Cancellation of invitations after opening.
2914.407–3 Other mistakes disclosed before award.
2914.408 Award.
2914.408–1 General.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2914.4—Opening of Bids and Award of Contract

2914.404–1 Cancellation of invitations after opening.

The authority of the agency head in FAR 14.404–1(c) and (f) to make a *written* determination to cancel an invitation for bids and reject all bids after opening and to authorize completion of the acquisition through negotiation is delegated to the HCA.

2914.407–3 Other mistakes disclosed before award.

(a) The authority to make determinations, as conferred by FAR 14.407–3(e) is delegated to the HCA, without power of redelegation, but only after consultation with the Office of the Solicitor. All such determinations shall be documented in the contract file.

(b) The following procedures must be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision, as provided by FAR 14.407–3(i).

(1) Requests must be made by the HCA after consultation with the Office of the Solicitor.

(2) Requests must be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, DC 20548, and contain the following:

(i) The name and address of the party requesting the decision; and

(ii) A statement of the question to be decided, a presentation of all relevant facts, a statement of the requesting party's position with respect to the question, and copies of all pertinent records and supporting documentation.

2914.408 Award.

2914.408–1 General.

(a) When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the contracting officer makes a written determination that:

(1) The specifications used in the invitation were not unduly restrictive;

(2) Adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted;

(3) The price is reasonable; and

(4) The bid is otherwise in accordance with the invitation for bids.

(b) Such a determination must be placed in the contract file.

PART 2915—CONTRACTING BY NEGOTIATION

Subpart 2915.4—Contract Pricing

Sec.
2915.405–70 Determining fair and reasonable price.

Subpart 2915.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2915.508 Discovery of mistakes.

Subpart 2915.6—Unsolicited Proposals

2915.604 Agency points of contact.
2915.605 Content of unsolicited proposals.
2915.606 Agency procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2915.4—Contract Pricing

2915.405–70 Determining fair and reasonable price.

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.402), the contract action must be referred to the HCA for final resolution.

(b) Resolution under paragraph (a) of this section must be documented and signed by the HCA and included in the contract file.

Subpart 2915.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2915.508 Discovery of mistakes.

(a) The HCA is authorized to make the administrative determinations in FAR 15.508 after consultation with the Office of the Solicitor as required by FAR 14.407–4. This authority may not be redelegated.

(b) The contracting officer must process a mistake and prepare a case file in accordance with the requirements of FAR 14.407–4(e)(2). The file must be submitted to the HCA for final determination.

Subpart 2915.6—Unsolicited Proposals

2915.604 Agency points of contact.

(a) HCAs shall be the preliminary contacts for unsolicited proposals. This responsibility may be delegated.

(b) HCAs must establish within their agencies procedures for handling unsolicited proposals to ensure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR 15.6.

(c) The HCA must not forward for consideration an unsolicited proposal, if the proposal resembles an upcoming solicitation or a procurement identified in the current annual acquisition plan.

2915.605 Content of unsolicited proposals.

In addition to the contents required by FAR 15.605, unsolicited proposals for research should contain a commitment by the offeror to include cost-sharing or should represent a significant cost savings to the Department of Labor.

2915.606 Agency procedures.

When an unsolicited proposal is received by an official of the Department of Labor, the recipient of the proposal must forward it to the HCA. The HCA must address the requirements of FAR 15.604. The HCA must determine if there is an office(s) within the Department of Labor whose mission could be impacted by the proposal. If there is, the HCA must designate a recipient within that office as an ''assignee'', and take the following action:

(a) Within seven (7) working days of receipt, the HCA must forward the proposal to the assignee along with instructions concerning the security, review and disposition of the document.

(1) Inform the offeror of this transfer in writing (preferably by facsimile or other electronic means).

(2) Within one (1) month of receipt of the unsolicited proposal by the assignee, the office receiving the proposal must determine the merit of the unsolicited proposal.

(i) If the office finds insufficient merit to consider the unsolicited proposal further, then a letter will be sent to inform the offeror that their proposal will not be considered further, and is not being retained.

(ii) If, after a comprehensive evaluation as defined by FAR 15.606–2, the office finds merit in the proposal, it must consult with a Department of Labor contracting officer for direction in complying with FAR 15.607. If not excluded by a condition of FAR 15.607(a), a requisition may be prepared in accordance with FAR 15.607(b). If the requirement exceeds the simplified acquisition threshold inclusive of options then a request must be prepared for the Procurement Review Board in accordance with Department of Labor procedures stated in Department of Labor Manual Series 2–830 (available by

mail from the Division of Acquisition Management Services).

(b) If within one (1) month of receipt (by the HCA) no assignee can be identified, the HCA must notify the offeror that the proposal is not being considered further.

PART 2916—CONTRACT TYPES

Sec.
2916.000 Scope of part.

Subpart 2916.5—Indefinite-Delivery Contracts

2916.505 Ordering.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603–2 Application.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2916.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. It further prescribes policies and procedures for implementing contracts.

Subpart 2916.5—Indefinite-Delivery Contracts

2916.505 Ordering.

In accordance with FAR 16.505(b)(5), the Department of Labor Task Order and Delivery Order Ombudsman is the DOL Competition Advocate (see DOLAR part 2902).

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Task orders against DOL contracts and orders against multi-agency or Governmentwide contracts for services above the micropurchase threshold must comply with the provisions of FAR 16.505.

2916.603–2 Application.

The HCA is authorized to extend the period for definitization of a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

PART 2917—SPECIAL CONTRACTING METHODS

Sec.
2917.000 Scope of part.

Subpart 2917.2–Options

2917.202 Use of options.
2917.207 Exercising options.

Subpart 2917.5—Interagency Acquisitions Under The Economy Act

2917.500 Scope of subpart.
2917.501 Definitions.
2917.502 General.
2917.503 Determinations and findings requirements.
2917.504 Ordering procedures.
2917.504–70 Signature authority and internal procedures.

Authority: 5 U.S.C. 301; 31 U.S.C. 1535; 40 U.S.C. 486(c).

2917.000 Scope of part.

This part implements polices and procedures stated in FAR part 17.

Subpart 2917.2—Options

2917.202 Use of options.

The HCA may, in unusual circumstances, approve option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2). The documentation required by FAR 17.205(a) must include a written justification to fully support the need for such action.

2917.207 Exercising options.

The contracting officer must use a standardized determination and finding before exercising an option in accordance with FAR 17.207(f).

Subpart 2917.5—Interagency Acquisitions Under The Economy Act

2917.500 Scope of subpart.

This subpart establishes DOL policy and procedures to assure the appropriate and consistent use of interagency acquisitions under the Economy Act (31 U.S.C. 1535) as prescribed by FAR 17.5.

2917.501 Definitions.

Interagency Acquisition means a procedure by which a DOL agency obtains needed supplies or services from, or through, another DOL agency or Federal agency, and appropriated funds are obligated.

Interagency Agreement means the legal instrument used for an interagency acquisition to exchange funds or property between two DOL organizations or between a DOL agency and another Federal agency. This instrument is used when the DOL organization meets the definition of either the Requesting Agency or the Servicing Agency. ''Interagency Agreement'' and ''Interagency Acquisition'' does not include:

(1) Agreements involving supplies and services acquired from or through mandatory sources, as described in FAR part 8;

(2) Contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act or a HUBZone small business under the Historically Underutilized Business Zone (HUBZone) Act of 1997;

(3) Cooperative agreements and grants; or

(4) Any agreement or acquisition where a statute authorizes exception.

Military Interdepartmental Procurement Request (MIPR) means a type of interagency agreement used to place orders for supplies and non-personal services with a military department.

Requesting Agency means the Federal agency that needs the supplies or services, and is obligating the funds to provide for the costs of performance.

Servicing Agency means the Federal agency which is providing the supplies or performing the services, directly or indirectly, and will be receiving the funds to provide for the costs of performance.

2917.502 General.

(a) *Policy.* It is the policy of DOL to require that interagency agreements are written to assure that the obligation of fiscal year funds is valid, that statutory authority exists to obtain or perform the stated requirements, that the stated requirements are consistent with DOL's mission responsibilities, and that each agreement complies with applicable laws and regulations.

(b) *Applicability.* The provisions of this subpart apply to interagency acquisitions and agreements under the Economy Act.

(c) *Appropriations principles.* The appropriate use of interagency acquisitions embodies several principles of Federal appropriations law.

(1) In order to record a valid obligation of appropriations, 31 U.S.C. 1501 imposes the requirements that interagency agreements be:

(i) A binding written agreement for specific goods or services to meet an existing *bona fide* need;

(ii) For a purpose authorized by law; and

(iii) Executed and obligated by the receiving agency before the expiration of available funds.

(2) The Economy Act authorizes interagency acquisitions and provides for payment in advance, as well as reimbursement to the appropriation account to which the performance costs have been charged. The Economy Act further authorizes the servicing agency, as an alternative to fulfilling the requirement through internal resources, to obtain the needed supplies or services by contract.

(3) An agreement entered into under the Economy Act is recorded as an obligation by the requesting agency the same as a contract. However, under the Economy Act, the obligated appropriations must be deobligated upon the date of ''expiration'' of the appropriation account to the extent that the servicing agency has not incurred

obligations through charged costs or under a contract.

(4) Within DOL, the DOL agencies have a number of statutory authorities available for entering into interagency agreements. Each DOL agency, in consultation with the Office of the Solicitor, must be responsible for determining those authorities, as well as constraints applicable to the use of advance payments and contractors, and set-up procedures.

2917.503 Determinations and findings requirements.

Applicability. Before the execution of an interagency agreement under the Economy Act, the contracting officer, or other authorized official, must sign the determination required in FAR 17.503 and 31 U.S.C. 1535.

2917.504 Ordering procedures.

(a) Requests for the processing of interagency agreements must be submitted to the procurement office serving the requisitioning office.

(b) The procurement request must state whether the work is to be performed by a DOL organization, a Federal agency other than DOL, or through one of these entities by a contractor.

(c) Where the Economy Act is to be used as the authority for an interagency acquisition, the requisitioning office must include the facts which support the conclusion that it is more economical to obtain the required supplies or services through the proposed interagency agreement, rather than by direct contract with a commercial concern. Current market prices or recent procurement prices may be used in this process.

(d) Orders placed under interagency agreements may take any form that is legally sufficient and reflects the agreement of the parties.

(e) The contracting officer, or authorized official, must assure compliance with the ordering procedures and payment provisions prescribed in FAR 17.504 and FAR 17.505, and require inclusion of the following provisions in all interagency agreements and/or orders placed against them:

(1) Legislative authority;

(2) Period of performance;

(3) Dollar amount of agreement;

(4) Billing provisions, including the name and address of the following offices:

(i) Designated office to receive the required deliverables; and

(ii) Designated office to receive billings and process payments;

(5) Modification and termination provisions; and

(6) Other provisions, as appropriate.

(f) The contracting officer must assure that each interagency agreement or order placed against it includes a reference number assigned by each of the parties. Such numbers must be assigned in accordance with the existing procedures established by the respective organizations.

(g) Modifications to existing interagency agreements may be accomplished through the use of an SF 30, Amendment of Solicitation/Modification of Contract, or through any other format acceptable to the parties.

2917.504–70 Signature authority and internal procedures.

(a) A DOL contracting officer, HCA, Agency Head, or another official designated by the Assistant Secretary for Administration and Management in accordance with FAR 17.503(c), must sign interagency agreements and/or orders placed against them which will result in a procurement action by the requesting or servicing agency.

(b) Internal procedures (DLMS 3–1700) require DOL Agency Heads to provide notice to the Director, Executive Secretariat of the signing of all new Federal Interagency Agreements and deleting expired agreements.

(c) Agencies should be aware that, in addition to the requirements of this subpart, there are various other internal Departmental procedures that apply to various types of agreements. Agencies should consult with the Office of the Solicitor and the Office of the Assistant Secretary for Administration and Management, as appropriate.

PART 2918—[RESERVED]

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.

2919.000 Scope of part.

Subpart 2919.2—Policies

2919.201 General policy.
2919.202 Specific policies.
2919.202–1 Encouraging small business participation in acquisitions.
2919.202–2 Locating small business sources.

Subpart 2919.5—Set-Asides for Small Business

2919.502 Setting aside acquisitions.
2919.505 Rejecting Small Business Administration recommendations.

Subpart 2919.7—The Small Business Subcontracting Program

2919.704 Subcontracting plan requirements.
2919.705–1 General support for the program.
2919.705–5 Awards involving subcontracting plans.
2919.705–6 Post-award responsibilities of the contracting officer.
2919.706 Responsibilities of the cognizant administrative contracting officer.

Subpart 2919.8—Contracting with the Small Business Administration (The 8(a) Program)

2919.812 Contract administration.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2919.000 Scope of part.

This part implements FAR part 19 and small business programs at the Department of Labor.

Subpart 2919.2—Policies

2919.201 General policy.

(a) It is the policy of the Department of Labor to provide maximum practicable opportunities to small businesses in acquisitions.

(b) Management responsibilities for small and disadvantaged business utilization are the responsibility of the Director, Office of Small Business Programs. This individual is responsible for performing all functions and duties prescribed in FAR 19.2 including appointing, as prescribed in FAR 19.201(d)(8), a small business specialist (SBS) for each contract office. The Department of Labor Manual Series (DLMS), Chapter 2 1000, addresses the implementation of the preference programs in procurement including HUBZone, Subcontracting Plans, Standard Form 294 (Subcontracting Report for Individual Contracts), and the report, Standard Form 295 (Summary Subcontracting Report) submission, *et al.*

(c) All DOL procurements over the simplified acquisition threshold, whether being conducted via open market or by ordering from a pre-existing contract vehicle such as GSA Schedule, must be reviewed and receive a recommendation by the Office of Small Business Programs, the Department of Labor's Office of Small Disadvantaged Business Utilization, prior to being advertised. The Acquisition Screening and Review Form DL–1–2004 shall be used for this purpose and the statement of work and market survey documentation shall be submitted to Office of Small Business Programs with the request for review.

2919.202 Specific policies.

Contracting officers, administrative officers and program management shall ensure that procurements are structured and conducted to afford small businesses the maximum practicable opportunity to participate in DOL's prime and subcontracts. Administrative

officers will review requisitions that will result in an award of $2 million or more using available information to certify whether the acquisition would constitute a ''bundled contract'' under the definition provided in FAR 2.101 in accordance with procedures established by the Office of Small Business Programs. Each certification will be submitted to the Division of Acquisition Management Services, and included with the requisition to the contracting officer. Reports will be provided to the Office of Small Business Programs.

2919.202–1 Encouraging small business participation in acquisitions.

During the performance of a contract, the contracting officer will consider performance against subcontracting plan goals, objectives and planned efforts before exercising an optional period of performance. The contracting officer will document the evaluation of the contractor's actual performance using SF–294 data compared to their approved subcontracting plan goals.

2919.202–2 Locating small business sources.

Any procurement conducted on an unrestricted basis will include solicitations to small businesses of each category with legislatively established government-wide procurement goals (*e.g.*, small, small disadvantaged, women-owned small, HUBZone and service disabled veteran-owned small businesses) to the extent practicable.

Subpart 2919.5—Set-Asides for Small Business

2919.502 Setting aside acquisitions.

Contracting officers will conduct market surveys specifically to determine whether procurements should be conducted via 8(a) procedures, HUBZone procedures or as small business set-asides. If a reasonable expectation exists that at least two responsible small businesses may submit offers at fair market prices (three responsible small businesses in procurements via GSA Federal Supply Schedule), then the procurement will be set aside for small business. Market surveys will be documented in all procurement actions not reserved for small businesses.

2919.505 Rejecting Small Business Administration recommendations.

When the SBA Procurement Center Representative appeals a ''rejection of an SBA recommendation'' as referenced in FAR 19.505(b) and (c), the appeal must be referred to the Assistant Secretary for Administration and Management who is authorized to make a final decision.

Subpart 2919.7—The Small Business Subcontracting Program

2919.704 Subcontracting plan requirements.

Contracting Officers will refer subcontracting plans to the Office of Small Business Programs for review and recommendation before awarding contracts that require subcontracting plans. Contracting officers will document the substance of any agreement with the contractor that permits performance at less than the stated goals recommended by the Office of the Small Business Programs.

2919.705–1 General support for the program.

Contracting officers will make available a significant number of award points for quality of the subcontracting plan. High-rated subcontract plans will incorporate the highest yield of subcontracting to all categories of small businesses when compared to DOL or separately negotiated agency subcontracting goals on a dollar and percentage basis. Conversely, prime small businesses will be compared favorably to large businesses with subcontract goals, but may also be given the maximum score for qualifying under multiple small business categories. Contracting officers may also make available a significant number of award points for performance against previous subcontracting plan goals and efforts to achieve those goals.

2919.705–5 Awards involving subcontracting plans.

The Office of Small Business Programs will review subcontracting plans and SF 295 submissions for performance against business goals negotiated between the Department of Labor and the Small Business Administration.

2919.705–6 Post-award responsibilities of the contracting officer.

(a) Even when a subcontracting plan was submitted to and approved by the Office of Small Business Programs before award, the contracting officer upon award, amendment, or significant modification of a contract, must forward to the Director, Office of Small Business Programs, a copy of the subcontracting plan that was incorporated into a contract or contract modification.

(b) Each contracting activity must maintain a list of active prime contracts containing subcontracting plans.

2919.706 Responsibilities of the cognizant administrative contracting officer.

Contracting officers must collect annual and semiannual subcontracting reports from contractors with established subcontracting plans. Copies of the report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the report, Standard Form 295 (Summary Subcontracting Report), must be forwarded to the Director, Office of Small Business Programs, not later than the 30th day of the month following the close of the reporting period. If the contractor has not met the goals for the reporting period, the contracting officer will provide an acknowledgement to the contractor and request corrective action to be taken. If goals are not met in subsequent periods, the contracting officer must consider factors that would demonstrate a good faith effort, and take appropriate action including assessing liquidated damages in accordance with FAR 52.219–16, and/or not exercising subsequent option periods.

Subpart 2919.8—Contracting with the Small Business Administration (The 8(a) Program)

2919.812 Contract administration.

(a) Contracting officers, or designees, must conduct periodic evaluations of the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation, which cannot be resolved, must be referred to the Office of Small Business Programs for subsequent review and discussion with the appropriate SBA official.

(b) The Office of Small Business Programs and the SBA should be notified at least 45 days before initiating final action to terminate an 8(a) contract.

PARTS 2920—2921 [RESERVED]

PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2922.1—Basic Labor Policies

Sec.
2922.101–3 Reporting labor disputes.
2922.101–4 Removal of items from contractor's facilities affected by work stoppages.
2922.103–4 Approvals.

Subpart 2922.8—Equal Employment Opportunity

2922.802 General.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2922.1—Basic Labor Policies

2922.101–3 Reporting labor disputes.

Potential or actual labor disputes that may interfere with contract performance must be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance. It may also become necessary to seek advice or assistance from the National Office of the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20006, or other mediation agencies.

2922.101–4 Removal of items from contractor facilities affected by work stoppages.

Before initiating any action under FAR 22.101–4 for removal of items from contractors' facilities, the contracting officer must obtain legal advice from the Office of the Solicitor.

2922.103–4 Approvals.

The ''agency approving official'' as identified in FAR 22.103–4(a) and (b) is a manager, supervisor, or executive responsible for the contracting officer's technical representative (see 2901.603–71).

Subpart 2922.8—Equal Employment Opportunity

2922.802 General.

Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that the Secretary of Labor promote full realization of equal opportunity for all persons regardless of race, color, religion, sex, or national origin. No DOL contracting officer may contract for supplies or services in a manner to avoid applicability of the requirements of E.O. 11246.

PART 2923 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 2923.2—Energy And Water Efficiency and Renewable Energy.

Sec.
2923.271 Purchase and use of environmentally sound and energy efficient products and services.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c); 42 U.S.C. 8262(g).

Subpart 2923.2—Energy And Water Efficiency and Renewable Energy

2923.271 Purchase and use of environmentally sound and energy efficient products and services.

The Department will implement policies and procedures that comply with the intent and specific goals mandated by the following statutes and executive orders and any other issuances as may be mandated to maximize cost efficient energy management:

(a) The GSA Federal Supply Schedule Products Guide identifies the recycled and recycled-content items available in the GSA FSS supply system. Copies of the guide may be obtained, without cost, from the GSA, Centralized Mailing List Service, P.O. Box 6477, Fort Worth, Texas, 76115, or by calling (817) 334–5215. *See also* GSA Advantage! at: *www.gsaadvantage.gov.*

(b) Executive Order 13123, *Greening the Government Through Efficient Energy Management,* dated June 8, 1999, requires agencies to select for procurement those energy consuming goods or products which are the most life cycle cost-effective (*see* FAR 7.101). Green purchasing includes the acquisition of recycled content products, environmentally preferable products and services, biobased products, energy- and water-efficient products, alternate fuel vehicles, and products using renewable energy.

(1) To the extent practicable, each program official must require vendors of goods or products to provide appropriate data that can be used to assess the life cycle cost of each good or product, including building energy system components, lighting systems, office equipment and other energy using equipment.

(2) In preparing solicitations and evaluating and selecting offers for award, contracting personnel must consider the life cycle cost data along with other relevant evaluation criteria. If life cycle costing is not used, the contract file must be documented to reflect the rationale for not obtaining and evaluating the data.

(c) Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* dated September 14, 1998, requires agencies to comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

(d) Executive Order 13148, *Greening the Government Through Leadership in Environmental Management Systems, dated April 21, 2000.* This Executive Order assists with developing an environmental management system. The following sources are provided as references for the subject matter indicated:

(1) The Office of the Federal Environmental Executive provides references to all greening the Government executive orders, web links to other relevant cites, and information on biobased and bioenergy products. *http://www.ofee.gov/gp/gp.htm.*

(2) The Comprehensive Procurement Guidelines program is part of the Environmental Protection Agency's continued effort to promote the use of materials recovered from solid waste. This listing provides information on products made from recycled materials, such as the carpeting and insulation used in office buildings, or reams of office paper. *www.epa.gov/cpg.*

(3) ENERGY STAR is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency. See also *http://www.eere.energy.gov/femp/procurement. www.energystar.gov.*

(4) The Alternative Fuels Data Center is a one-stop shop for agency alternative fuel and vehicle information needs. *http://www.afdc.nrel.gov.*

(5) The Defense Logistics Agency has created an electronic mall for buying environmentally preferable products. *www.emall.dla.mil.*

PARTS 2924–2927 [RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2928—BONDS AND INSURANCE

Subpart 2928.2—Sureties and Other Security for Bonds

Sec.
2928.204 Alternatives in lieu of corporate or individual sureties.

Subpart 2928.3—Insurance

2928.305 Overseas workers' compensation and war hazard insurance.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2928.2—Sureties and Other Security for Bonds

2928.204 Alternatives in lieu of corporate or individual sureties.

Upon receipt of any of the types of securities listed in FAR 28.20l or FAR 28.203, the contracting officer must verify the validity of the security and coordinate the retention of the security with the Chief Financial Officer. Contracting officers may obtain access to Department of Treasury Circular 570 through the Internet at *http://www.fms.treas.gov/c570/index.html.*

Subpart 2928.3—Insurance

2928.305 Overseas workers' compensation and war hazard insurance.

The authority of the Agency Head to recommend to the Secretary of Labor waiver of the applicability of the Defense Base Act (42 U.S.C. 1651, *et seq.*) to any contract, subcontract, work location, or classification of employees, is delegated to the HCA.

PART 2929—TAXES

Subpart 2929.1—General

Sec.
2929.101 Resolving tax problems.

Subpart 2929.3—State and Local Taxes

2929.303 Application of state and local taxes to Government contractors and subcontractors.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2929.1—General

2929.101 Resolving tax problems.

Contract tax problems or questions must be referred by the contracting officer to the Office of the Solicitor for resolution.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of state and local taxes to Government contractors and subcontractors.

(a) Contractors may only be treated as agents of the Government for the purposes set forth in FAR 29.303(a) upon the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under paragraph (a) of this section must be submitted by the HCA through the Office of the Solicitor, to the Division of Acquisition Management Services, for further action.

PART 2930—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 2930.2—CAS Program Requirements

Sec.
2930.201–5 Waiver.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2930.2—CAS Program Requirements

2930.201–5 Waiver.

(a) The HCA is authorized to waive CAS requirements as provided in FAR 30.201–5.

(b) Requests for waivers under paragraph (a) of this subsection must be prepared by the contracting officer as prescribed in FAR 30.201–5(e) and submitted to the HCA.

PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2931.1—Applicability

Sec.
2931.101 Objectives.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2931.1—Applicability

2931.101 Objectives.

Individual and class deviations from cost principles in FAR part 31 must be processed as prescribed in DOLAR subpart 2901.4.

PART 2932—CONTRACT FINANCING

Subpart 2932.4—Advance Payments for Non-Commercial Items

Sec.
2932.402 General.
2932.407 Interest.

Subpart 2932.7—Contract Funding.

2932.703 Contract funding requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2932.4—Advance Payments for Non-Commercial Items

2932.402 General.

The HCA is authorized to approve determinations and findings as well as contract terms for advance payments. The contracting officer must submit a recommendation for approval or disapproval of the contractor's request to the HCA.

2932.407 Interest.

The HCA may authorize advance payments without interest pursuant to FAR 32.407.

Subpart 2932.7—Contract Funding

2932.703 Contract funding requirements.

(a) Except in unusual circumstances, the contracting office may not issue solicitations until an approved procurement request (PR), containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the PR certifying that funds are available when:

(1) The Assistant Secretaries, Inspector General, Bureau Chief, Deputy Under Secretary, Solicitor of Labor, Commissioner, or Director of the Women's Bureau certifies that such action is necessary to meet critical program schedules for their program area;

(2) The Budget Officer certifies that program authority has been issued and funds to cover the acquisition will be available before the date set for receipt of proposals;

(3) The solicitation includes the clause at FAR 52.232–18, Availability of Funds.

(b) The contracting office may not open bids/close solicitations until a PR, either planning or final, has been received that contains a certification of fund availability. Only the project or program official with the authority to commit funds from the agency that initiated the PR may make that written certification.

(c) The project or program office that initiated the PR is responsible for obtaining required certifications.

PART 2933—PROTESTS, DISPUTES, AND APPEALS

Subpart 2933.1—Protests

Sec.
2933.102 General.
2933.103 Protests to the agency.
2933.104 Protests to GAO.

Subpart 2933.2—Disputes And Appeals

2933.203 Applicability.
2933.209 Suspected fraudulent claims.
2933.211 Contracting officer's decision.
2933.212 Contracting officer's duties upon appeal.
2933.213 Obligation to continue performance.
2933.270 Department of Labor Board of Contract Appeals.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c); E.O. 12979, 60 FR 55171, 3 CFR, 1995 Comp., p. 417.

Subpart 2933.1—Protests

2933.102 General.

(a) The Division of Acquisition Management Services, 200 Constitution Ave., NW., S–1513 B, Washington, DC 20210–0001, telephone (202) 693–7285, facsimile (202) 693–7290 (or the Office acting in that capacity), is responsible for coordinating procurement protests filed with the General Accounting Office.

(b) The authority of the Assistant Secretary for Administration and Management under FAR 33.102(b) to determine that a solicitation, proposed award, or award does not comply with the requirements of law or regulation may be delegated to the HCA.

2933.103 Protests to the agency.

(a) In accordance with Executive Order 12979, the following procedures apply to agency protests:

(1) The filing time frames in FAR 33.103(e) apply to agency protests. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests; or if none is designated, when filed with a contracting officer or HCA.

(2) An interested party filing an agency protest may request either that the contracting officer or the Agency Protest Official decide the protest. The ''Agency Protest Official'' is an individual above the level of the contracting officer and designated by the Assistant Secretary for Administration and Management, such as the Competition Advocate. The deciding official, whether a contracting officer or Agency Protest Official, must work in consultation with the Office of the Solicitor to resolve the protest.

(3) In addition to the information required by FAR 33.103(d)(2), the protest must:

(i) Indicate that it is a protest to the agency;

(ii) Be contemporaneously filed with the contracting officer;

(iii) State whether the protestor chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(b) ''Interested Party'' means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) If the Agency Protest Official is chosen by the protestor to decide the protest, this is an alternative to a decision by the contracting officer, not an appeal. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest.

(d) The deciding official should consider conducting a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. Alternative Dispute Resolution techniques will be considered if determined appropriate by the deciding official.

(e) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(f) Apart from its protest document, the protestor will be given only one opportunity to support or explain in writing the substance of its protest. Department of Labor procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(g) The preferred practice is to resolve protests through informal oral discussion.

(h) An interested party may represent itself or be represented by legal counsel. The Department of Labor will not reimburse the protester for any legal fees or costs related to the agency protest.

(i) If an agency protest is received before contract award, the contracting officer may only make award if the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, or within five (5) days of the offer of a debriefing required by FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend performance of the contract unless the HCA makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written, dependent upon advice of legal counsel.

(k) The deciding official must send a confirming letter within three (3) days after the decision using a means that provides evidence of receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(3) If the deciding official sustains the protest, relief may consist of any of the following:

(i) Recommendation that the contract be terminated for convenience or cause, or that the solicitation be canceled.

(ii) Recompeting the requirement from the beginning of the solicitation or from the last round of negotiations.

(iii) Amending the solicitation.

(iv) Refraining from exercising contract options.

(v) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(vi) Other action that the deciding official determines is appropriate.

(l) If the deciding official sustains a protest, then within 30 days after receiving the official's recommendations for relief, the contracting officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the deciding official, if the contracting officer was not the deciding official, in writing, if any recommendations have not been implemented and explain why.

(m) If the protest is denied, and contract performance has been suspended under paragraph (i) of this section, the contracting officer will not lift such suspension until five (5) days after the protest decision has been issued, to allow the protester to file a protest with the General Accounting Office, unless the HCA makes a new finding under FAR 33.103(f)(3). The contracting officer shall consider allowing such suspension to remain in effect pending the resolution of any GAO proceeding.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Labor.

2933.104 Protests to GAO.

(a) *General procedures.* The HCA has the responsibility to prepare and provide to the General Accounting Office (GAO) the agency report with the information required by FAR 33.104(a). The agency report must be coordinated with the Office of the Solicitor before the report is signed and sent to the GAO.

(b) *Protests before award.* The authority of the HCA under FAR 33.104(b) to authorize a contract award when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(b)(1). The written finding must be coordinated with Office of the Solicitor before the HCA affirms its approval by signing the written finding and sending it to the GAO. Copies of the signed written finding and the signed written notice to the GAO must be provided to the Senior Procurement Executive within two (2) working days after they are sent to the GAO.

(c) *Protests after award.* The authority of the HCA under FAR 33.104(c) to authorize contract performance when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(c)(2). The written finding must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO.

(d) *Notice to the GAO.* The authority of the HCA under FAR 33.104(g), to report to the GAO the failure to fully implement the GAO recommendations with respect to a solicitation for a

contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, is nondelegable. The written notice must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO. A copy of all notices to the GAO submitted in accordance with FAR 33.104(g) must be provided to the Senior Procurement Executive within (two) working days after they are sent to the GAO.

Subpart 2933.2—Disputes and Appeals

2933.203 Applicability.

The authority of the Agency Head to determine that the application of the Contract Disputes Act of 1978 to any contract with a foreign government or agency of that government, or an international organization or a subsidiary body of that organization, would not be in the public interest is delegated to the HCA.

2933.209 Suspected fraudulent claims.

The contracting officer must refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of the Inspector General for further action or investigation.

2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) must include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 800 K Street, NW, Suite 400 North, Washington, DC 20001–8002.

2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer must endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed). The contracting officer must also notify the Solicitor of Labor of the appeal.

(b) The contracting officer should prepare and transmit the administrative file for the Office of the Solicitor and assist with the appeal.

2933.213 Obligation to continue performance.

The contracting officer must include the clause at FAR 52.233–1, Disputes (Alternate I), in contracts where continued performance is necessary pending resolution of any claim arising under or relating to the contract.

2933.270 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract, or relating to a contract, made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The LBCA rules of procedure are contained in 41 CFR part 29–60.104, appearing in the July 1, 1983, edition of 41 CFR, subtitle A, chapters 19–100.

PARTS 2934–2935 [RESERVED]

PART 2936—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.
2936.201 Evaluation of contractor performance.
2936.209 Construction contracts with architect-engineer firms.

Subpart 2936.5—Contract Clauses

2936.516 Quality surveys.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602–1 Selection criteria.
2936.602–2 Evaluation boards.
2936.602–3 Evaluation board functions.
2936.602–4 Selection Authority.
2936.602–5 Short selection processes for contracts not to exceed $100,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2936.2—Special Aspects of Contracting for Construction

2936.201 Evaluation of contractor performance.

The HCA must establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201.

2936.209 Construction contracts with architect-engineer firms.

As required by FAR 36.209, no contract for construction of a project may be awarded to the firm that designed the project, or to its subsidiaries or affiliates, without the written approval of the Assistant Secretary for Administration and Management. Any request for approval must include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 2936.5—Contract Clauses

2936.516 Quality surveys.

The HCA is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.

2936.602–1 Selection criteria.

HCAs are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

2936.602–2 Evaluation boards.

HCAs must establish procedures to provide permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. Procedures must provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined in writing by the HCA to be essential to meeting the Government's minimum needs.

2936.602–3 Evaluation board functions.

The selection report required in FAR 36.602–3(d) must be prepared for the approval of the HCA.

2936.602–4 Selection Authority.

The HCA is authorized to serve as the designated Selection Authority in accordance with FAR 36.602–1.

2936.602–5 Short selection processes for contracts not to exceed $100,000.

The selection process prescribed in FAR 36.602–5(b) must be used for architect-engineer contracts not exceeding the simplified acquisition threshold.

2936.603 Collecting data on and appraising firms'qualifications.

(a) HCAs who acquire architect-engineer services must establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under paragraph (a) of this section must be submitted to the Division of Acquisition Management Services, for review and recommendation for approval to the HCA when updated. These procedures must include a list of names, addresses, and telephone numbers of offices or boards assigned to

maintain architect-engineer qualification data files.

2936.604 Performance evaluation.

(a) The HCA must establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report must be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures must prescribe instructions for review of the report, before distribution, as prescribed in FAR 36.604(b).

(b) Performance reports must be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance, including Government notification to the contractor and written comments by the contractor, must also be attached to the report.

PART 2937—SERVICE CONTRACTING

Subpart 2937.1—Service Contracts-General

Sec.
2937.103 Contracting officer responsibility.
2937.103–70 Department of Labor checklist to aid analysis and review of requirements for service contracts.

Subpart 2937.2—Advisory and Assistance Services

2937.203 Policy.

Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

2937.602 Elements of performance-based contracting.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 2937.1—Service Contracts-General

2937.103 Contracting officer responsibility.

The HCA is responsible for establishing internal review and approval procedures for service contracts in accordance with OFPP Policy Letter 93–1 (Reissued), ''Management Oversight of Service Contracting''. As defined by FAR 37.101, contracts for personal services are permitted under the circumstances in 5 U.S.C. 3109.

2937.103–70 Department of Labor checklist to aid analysis and review of requirements for service contracts.

Contracting specialists and contracting officers must work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards.

(a) *General.* Following is a checklist to aid analysis and review of requirements for service contracts.

(1) Is the statement of work complete, with a clear-cut division of responsibility between the contracting parties?

(2) Is the statement of work discussed in terms the market can satisfy?

(3) Does the statement of work encompass all commercially available services that can meet the actual functional need (eliminates any nonessential preferences that may thwart full and open competition)?

(4) Is the statement of work performance-based to the maximum extent possible (*i.e.*, is the acquisition structured around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or a broad and imprecise statement of work)?

(b) *Cost effectiveness.* If the response to any of the following questions is negative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner.

(1) Is the statement of work written so that it supports the need for a specific service?

(2) Is the statement of work written so that it permits adequate evaluation of contractor versus in-house cost and performance?

(3) Are the choices of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan appropriate to ensure good contractor performance to meet the user's needs?

(4) If a cost reimbursement contract is contemplated, is the acquisition plan adequate to ensure that the contractor will have the incentive to control costs under the contract?

(5) Is the acquisition plan adequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(6) Is the cost estimate or other supporting cost information adequate to enable the contracting office to effectively determine whether costs are reasonable?

(7) Is the statement of work adequate to describe the requirement in terms of ''what'' is to be performed as opposed to ''how'' the work is to be accomplished?

(8) Is the acquisition plan adequate to ensure that there is proper consideration given to ''quality'' and ''best value?''

(c) *Control.* If the response to any of the following questions is negative, there may be a control problem.

(1) Are there sufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(2) Does the quality assurance plan provide for adequate monitoring of contractor performance?

(3) Is the statement of work written so that it specifies a contract deliverable or requires progress reporting on contractor performance?

(4) Is agency expertise adequate to independently evaluate the contractor's approach, methodology, results, options, conclusions or recommendations?

(d) *Conflicts of interest.* If the response to any of the following questions is affirmative, there may be a conflict of interest.

(1) Can the potential offeror perform under the contract to devise solutions or make recommendations that would influence the award of future contracts to that contractor?

(2) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(3) Has a potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract, wherein the offeror had access to source selection or proprietary information not available to other offerors competing for the contract?

(4) Will the contractor be evaluating a competitor's work?

(5) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?

(6) Will the work under this contract put the contractor in a position to influence government decision-making, *e.g.*, developing regulations that will affect the contractor's current or future business?

(7) Will the work under this contract affect the interests of the contractor's other clients?

(8) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who—while employed by the agency—personally and substantially participated in the development of the requirement for, or the procurement of, these services within the past two years?

(e) *Competition*. If the response to any of the following questions is negative, competition may be unnecessarily limited.

(1) Is the statement of work defined so as to avoid overly restrictive specifications or performance standards?

(2) Is the contract formulated in such a way as to avoid creating a continuous and dependent arrangement with the same contractor?

(3) Is the use of an indefinite quantity or term contract arrangement appropriate to obtain the required services?

(4) Will the requirement be obtained through the use of full and open competition?

Subpart 2937.2—Advisory and Assistance Services

2937.203 Policy.

(a) HCAs having a requirement for certain advisory and assistance services are required by the Department of Labor Manual Series (*See* DLMS 2 836) to prepare a written justification for such services. Written justification must be submitted to the Assistant Secretary for Administration and Management for review by the Procurement Review Board, for Assistant Secretary for Administration and Management approval.

(b) Regardless of the type of action planned, the justification in paragraph (a) of this section must include the following:

(1) A statement of need, which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the need, and the results expected.

(3) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services is necessary.

(4) Any additional information or data that support the requirement for a contract.

(5) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional Information.

(6) A statement that the Government policy on advisory and assistance services has been reviewed and complies with FAR 37.203.

Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

2937.602 Elements of performance-based contracting.

(a) Performance-based contracting is defined in FAR 37.101 and discussed in FAR 37.6. Although FAR Part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for services. (*See* exceptions listed in FAR 37.102.) Generally, when contract performance risk under a PBC specification can be shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (*e.g.*, Firm-Fixed-Price, Fixed-Price-Incentive-Fee, or Cost-Plus-Incentive-Fee) is appropriate. However, when contractor performance (*e.g.*, cost control, schedule, or quality/technical) is best evaluated subjectively using qualitative measures, a Cost-Plus-Award-Fee contract may be used.

(b) A labor hour level-of-effort contract is not considered a PBC.

PARTS 2938—2941 [RESERVED]

Subchapter G—Contract Management

PART 2942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2942.1—Contract Audit Services

Sec.
2942.101 Policy.

Subpart 2942.15—Contractor Performance Information

2942.1501 Scope.
2942.1502 Policy.
2942.1503 Procedures.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 2942.1—Contract Audit Services

2942.101 Policy.

The OASAM Division of Cost Determination is responsible for establishing billing rates and indirect cost rates as prescribed in FAR 42.7 for the Department of Labor.

Subpart 2942.15—Contractor Performance Information

2942.1501 Scope.

This subpart provides policies and procedures for evaluating, maintaining, and releasing contractor performance information under DOL contracts.

2942.1502 Policy.

DOL contracting officers are required to use or interface with the Past Performance Information Retrieval System (PPIRS), and specifically the National Institutes of Health's Contractor Performance System. The HCA is responsible for ensuring that a contractor performance evaluation system is generated to meet the requirements of FAR subpart 42.15, including compliance with subcontracting plans. Contracts, task orders, and delivery orders, exceeding the simplified acquisition threshold, should be formally evaluated in writing. Interim evaluations should be performed on contracts exceeding one year in duration. This will assist contractors with improving marginal performance and identifying any major deficiencies. It will also facilitate performance evaluations at contract completion, as well as determining whether to exercise contract options, if any.

2942.1503 Procedures.

(a) In accordance with FAR 42.1502, the contracting officer will prepare an interim evaluation of a contractor's performance at least annually for submission to the Past Performance Information Retrieval System (PPIRS), and specifically the Contractor Performance System maintained by the National Institutes of Health.

(b) The contracting officer, or designee, must determine who will evaluate a contractor's performance. The contracting officer's technical representative, program manager, contract specialists or administrators, and users are candidates likely to be selected to perform the evaluation.

(c) A contractor's performance evaluation should be obtained from a person who monitored contractor performance when that individual's assignment of duties or employment terminates before physical completion of the contract. The areas of performance to be selected for evaluation should be tailored to the type of supplies or services normally acquired by the contracting activities and the type of contract. HCAs must ensure uniformity of the evaluation criteria within their contracting activities.

(d) Release of contractor performance evaluation information.

(1) Requests for performance evaluation information from the public must be processed in accordance with FOIA, as implemented by DOL under 29 CFR part 70.

(2) Release of a contractor's performance evaluation information to other Federal agencies is subject to FAR 42.1502. When the performance evaluation information is released to other federal agencies, it should be provided with a written statement that it is nonpublic information that must be processed under FOIA principles if a request for its disclosure is received.

(e) Even though the retention period for past performance evaluation information is three years (*see* FAR 42.1503), the contractor's performance evaluation, any contractor rebuttal, and

final decision become a part of the contract file. Therefore, disposal of the contractor's evaluation information must be accomplished in accordance with FAR 4.804.

PART 2943—CONTRACT MODIFICATIONS

Subpart 2943.2—Change Orders

Sec.
2943.205 Contract clauses.

Subpart 2943.3—Forms

2943.301 Use of forms.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2943.2—Change Orders

2943.205 Contract clauses.

HCAs may establish procedures, or office policies, when appropriate for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205.

Subpart 2943.3—Forms

2943.301 Use of forms.

(a) FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF–30) to execute any obligation or deobligation of contract funds after award. FAR 13.307(c)(3) allows, and the Department of Labor prefers, the use of the SF–30 for simplified acquisitions. The SF–30 also must be used to deobligate funds when effecting contract closeout when obligated funds exceed the final contract costs. In such an instance, the SF–30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained.

(b) The contracting officer must include, in any unilateral contract modification issued for contract closeout, a statement that the contractor has signed a release of claims and indicate the date the release of claims was signed by the contractor.

PART 2944—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2944.1—General

Sec.
2944.101 Waiver.

Subpart 2944.2—Consent To Subcontract

2944.201–1 Consent requirements.
2944.202 Contracting officer's evaluation.
2944.202–2 Considerations.
2944.203 Consent limitations.

Subpart 2944.3—Contractors' Purchasing Systems Reviews

2944.302 Requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2944.1—General.

2944.101 Waiver.

The waiver of consent must be in writing, signed by the contracting officer, and included in the contract file. The waiver must include all supporting facts, including the rationale for waiving the consent to subcontract requirements.

Subpart 2944.2—Consent To Subcontract

2944.201–1 Consent requirements.

In accordance with FAR 44.201–1(b) or FAR 44.201–2, advance notification and agreement are required for all cost-reimbursement, time-and-materials, or labor-hour subcontracts exceeding the simplified acquisition threshold.

2944.202 Contracting officer's evaluation.

2944.202–2 Considerations.

The review required by FAR 44.202–2(a) must be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

2944.203 Consent limitations.

Any limitations placed on the consent to subcontract must be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

Subpart 2944.3—Contractors' Purchasing Systems Reviews

2944.302 Requirements.

The authority of the Assistant Secretary for Administration and Management under FAR 44.302(a), to raise or lower the $25 million review level for a contractor's purchasing system, may not be delegated. When a contractor's purchasing system review is required by the contracting officer, the effort must be coordinated with the OASAM Business Operations Center's Division of Acquisition Management Services and the Division of Cost Determination.

PART 2945—GOVERNMENT PROPERTY

Subpart 2945.1—General

Sec.
2945.104 Review and correction of contractors' property control systems.
2945.105 Records of Government property.

Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental-use and charges clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2945.1—General

2945.104 Review and correction of contractors' property control systems.

When the Government's property administrator determines that review and approval of the contractor's property control system rests with DOL, the Government's property administrator must review the system to determine whether the contractor will be able to meet the requirements of FAR 45.104. The review must be completed, signed by the appointed property administrator, and retained in the contract file.

2945.105 Records of Government property.

Contracting officers must maintain a file on any Government-furnished property (GFP) in the possession of contractors. As a minimum, the file must contain the following:

(a) A copy of the applicable portions of the contract that list the GFP;

(b) Contracting officer's letters assigning the GFP administrator to the contract;

(c) Written evidence that the contractor's property control system was reviewed and approved as required by FAR 45.104;

(d) If applicable, documentation of the request and approval or denial of the contractor's requests to acquire or fabricate special test equipment in accordance with FAR 45.307 or other property;

(e) The contractor's written notice of receipt of the GFP and any reported discrepancies thereto, as required by FAR 45.502–1 and 45.502–2, respectively;

(f) Any other documents pertaining to or affecting the status of the GFP in the possession of contractors or subcontractors under the contract;

(g) Documentation of the screening and disposal of all GFP as required by FAR 45.6.

Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

The HCA is authorized to make the determination to provide facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental-use and charges clause.

The HCA must make the determination to charge rent on the basis of use under the clause at FAR 52.245–9 when the contracting officer provides access to Government

production and research property, as prescribed in FAR 45.403(a).

PARTS 2946–2951 [RESERVED]

PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

Sec.
2952.201–70 Contracting Officer's Technical Representative (COTR).

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 52.2—Text of Provisions and Clauses

2952.201–70 Contracting Officer's Technical Representative (COTR).

Insert the following clause into contracts requiring COTR representation under 2901.603.71:

Contracting officer's technical representative (COTR) May 2004

(a) Mr./Ms. (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as contracting officer's technical representative (COTR) under this contract.

(b) The COTR is responsible, as applicable, for: receiving all deliverables; inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual scope of work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If, as a result of technical discussions, it is desirable to alter/change contractual obligations or the scope of work, the contracting officer must issue such changes.

PART 2953—FORMS

Subpart 2953.1—General

Sec.
2953.100 Request for Recommendation by Procurement Review Board DL 1–490.
2953.101 Simplified Acquisition Documentation Checklist DL 1–2216.
2953.102 Quotation for Simplified Acquisitions DL 1–2078.
2953.103 Acquisition Screening and Review—over $100,000 DL 1–2004.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2953.1—General

2953.100 Request for Recommendation by Procurement Review Board DL 1–490.

The following form must be used by the requisitioning office to submit a request for review by the Procurement Review Board as specified in DOLAR 2901 and 2943. This form must be submitted through the Assistant Secretary for the program office to the Director, Division of Acquisition Management Services, for scheduling before the Procurement Review Board.

BILLING CODE 4910–23–P

Request for Recommendation by Procurement Review Board

U.S. Department of Labor

INITIATING AGENCY: _____ POINT OF CONTACT: _____

INITIATING OFFICE: _____ TELEPHONE NUMBER: _____

1. Title, Purpose, Amount, Period of Performance

A. Title and purpose of contract, grant, or cooperative agreement: _____

B. Total dollar obligations attributable to this request: _____

C. Period of Performance requested for this action:
From: _____ To (including optional periods): _____

2. Type of Request/Authority

A. Type of Request (check all that apply)

- ☐ New Sole Source Contract or Contract Modification or Extension (FAR 6.302 and DLMS 2-836). Complete Item 5.
- ☐ New Sole Source Discretionary Grant or Cooperative Agreement (DLMS 2-836), or Modification or Extension of a Discretionary Grant or Cooperative Agreement (DLMS 2-836). Complete Item 5.
- ☐ Advisory and Assistance (A&A) Services (FAR 37.2). Complete Item 6.
- ☐ Ratification of an unauthorized commitment (FAR 1.602-3). Complete Item 7.
- ☐ Waiver to contract with a Current/Former Government Employee (individual or owner) (FAR 3.6 and DOLAR 2903.6). Attach Narrative.
- ☐ Application for use of Brand Name Specifications (FAR 6.302-1). Complete Item 5.
- ☐ Potential financial conflicts (DLMS 2-836(b)(2) and FAR 3.104-7(b)). Attach Narrative.

B. Authority. If this request involves a grant or cooperative agreement, provide the specific legal authority, including citation (e.g. Section # of the XXXX Act, # U.S.C. ####): _____

3. Information about Proposed Recipient of Contract, Grant, or Cooperative Agreement

A. Name: _____

B. Address: _____

_____

C. Type of Organization: (circle all that apply)
Large Business / Small Business
Profit/ Nonprofit or Not-for-Profit / Foreign
Government / Educational Institution / Faith-Based or Community-Based
Other (describe) _____

D. To ensure that this organization is not currently suspended or debarred from federal programs, attach the results of a word search of the organization's name at http:/www.epls.gov/servlet/EPLSSearchMain/1.

E. (Enter City/State or Circle applicable area) Nationwide Foreign Region: NE SE MW NW SW
Area of Performance/Benefit: City: _____ State: _____

4. Other Contracts, Grants or Cooperative Agreements with Proposed Recipient

Provide the following information to the extent possible for each other contract, grant and/or other agreement active within the last year between the proposed organization and the Department of Labor using the following format. Additional references may be provided by attachment.

Title of Project: _____
Agency Served: _____ Period of Performance: _____
Contract/Grant/Agreement Number: _____ Total Life Cycle Cost to date: _____

☐ Additional references attached.

DL 1-490
(Rev. 10/03)

5. Sole Source Justification **[Skip If Not Applicable]**

☐ If this is a request for sole source contract, grant, or cooperative agreement authority, review the instructions and identify below the bases for a sole source award. Please attach a succinct narrative supporting each of the bases chosen to support the sole source selection. If you are claiming that the proposed recipient is the only responsible source or has unique qualifications, you must provide supporting information such as market research or other available information indicating whether there are other potential recipients and, if so, explain why you do not consider them acceptable. In addition, outline any steps that will be taken in the future to eliminate the need for sole source authority.

6. Advisory And Assistance Services (A&A) **[Skip If Not Applicable]**

A. Check one of the following: ☐ Sole Source A&A ☐ Competitive A&A value over $50,000

B. Subject to FAR 37.203, agencies may contract for advisory and assistance services, when essential to the agency's mission, to:

☐ (1) Obtain outside points of view to avoid too limited judgement on critical issues;
☐ (2) Obtain advice regarding developments in industry, university, or foundation research;
☐ (3) Obtain the opinions, special knowledge, or skills of noted experts;
☐ (4) Enhance the understanding of, and develop alternative solutions to, complex issues;
☐ (5) Support and improve the operation of organizations; or
☐ (6) Ensure the more efficient or effective operation of managerial or hardware systems.

Check the applicable box(es) above and attach written explanation.

7. Ratification Of Unauthorized Commitments **[Skip If Not Applicable]**

Ratifications of unauthorized commitments are authorized only under FAR 1.602-3 (c) which identifies seven limitations on use of the authority, and DOLAR 1.602-3, which outlines the DOL ratification procedures. Please review those requirements and attach to this form the required documents, including findings and a determination by the Agency Head that the statements are accurate, the Contracting Officer's determination that the price is fair and reasonable with a recommendation for payment, and legal counsel's (SOL/ETLS) determination that the ratification is legally supportable.

8. Conflict Of Interest Certification (Must Be Completed For Each Action):

I certify to the best of my knowledge and belief that statements provided herein are accurate and true, and I have no organizational, personal, financial or other conflicts of interest which could call into questions my objectivity in this matter or present a prohibited relationship under either 18 U.S.C. 208 or 5 C.F.R. § 2635.502.

Program Official (Contracting or Grant Officer's Technical Representative)

____ Otherwise, I have attached documentation to explain a possible relationship.

_____ _____
Signature Date

Agency Head

____ Otherwise, I have attached documentation to explain a possible relationship.

_____ _____
Signature Date

Note: Conflict of Interest statements apply to individuals and may be signed only by the individuals to whom they apply.

INSTRUCTIONS FOR COMPLETING THE DL 1-490

General Instructions: Agencies should consult DLMS 2-836, as well as the cited provisions of the Federal Acquisition Regulation (FAR) and Department of Labor Acquisition Regulation (DOLAR), as they prepare submissions to the PRB. Agencies also should ensure that their submissions are concise, but complete.

Item 1. Provide a one sentence title to describe the type of grant, contract, or cooperative agreement, and a short description of the purpose of the requested action. The total dollar threshold should include proposed optional periods of performance and additional services.

Item 2. FAR references may be found at http://www.arnet.gov/far/loadmainre.html; the Department of Labor Acquisition Regulation (DOLAR) may be found at http://www.dol.gov/dol/allcfr/Title_48/Chapter_29.htm; and all other references may be found at:http://www.labornet.dol.gov/DCS_FileSystem/DLMS2Administration/dlms2_0800.doc. If the proposed action is a grant or cooperative agreement, please provide the specific legal authority, including citation (e.g. Section ____ of the ___ Act, ___ U.S.C. ___), for the grant or cooperative agreement. You also may wish to consult the division of the Office of the Solicitor that serves your agency.

Item 3. The company or organization (including sub-organization) should be identified.

Item 4. The OASAM/Business Operations Center/Office of Acquisition and Management Services/Division of Acquisition Management Services may be able to assist you in this effort.

Item 5. Sole source justifications are summarized below. *Please note, however, that authorizing program statutes or appropriation laws sometimes include specific provisions restricting non-competitive actions. In those cases, the statutory authority supercedes the authority outlined below and the statutory authority should be cited in your response to item 5.*

Contract Authority:

- FAR 6.302-1 Sole Source and no other supplies or services will satisfy agency requirements
  (i) unsolicited proposal
  (ii) follow on to competed action for a major system.
  (iii) rights in data, patent rights, copyrights or secret processes make supplies available from only one source.
- FAR 6.302-2 Unusual and compelling urgency.
- FAR 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services for dispute resolution.
- FAR 6.302-4 International agreement.
- FAR 6.302-5 Authorized or required by statute.
- FAR 6.302-6 National security
- FAR 6.302-7 Public interest (requires Secretarial and Congressional approval)

Grant Authority: DLMS 2, Chapter 800, Section 836(g):

(1) A non-competitive award is authorized or required by the statute funding the program.
(2) The activity to be funded is essential to the satisfactory completion of an activity presently funded by DOL, wherein competition would result in significant or real: harm (further harm) to the public good; expenses in excess of any potential savings to the Government; disruption to program services; duplication of work at additional cost to the Government; or delay in the time of program completion.
(3) Services are available from only one responsible source and no substitute will suffice; or the recipient has unique qualifications to perform the type of activity to be funded.
(4) The recipient has submitted an unsolicited proposal that is unique or innovative and has outstanding merit.
(5) The activity will be conducted by an organization using it's own resources or those donated or provided by third parties, and DOL support of the activity would be highly cost effective.
(6) It is necessary to fund a recipient that has an established relationship with the agency in order to: (A) Maintain an existing facility or capability to furnish services or benefits of particular significance to the agency on a long term basis; or (B) Maintain a capability for investigative, scientific, technical, economic, or sociological research.
(7) The application for the activity was evaluated under the criteria of the competition for which the application was submitted, was rated high enough to have deserved selection under that competition, and was not selected for funding because the application was mishandled by the Department.
(8) The Secretary has determined that a noncompetitive award is in the public interest. This authority may not be delegated.

Item 6. Advisory and Assistance Services are defined in FAR 2.101 and the policy is detailed in FAR Part 37.2.

Item 7. Ratification, as used in this subsection, means the act of approving an unauthorized commitment, by an official who has the authority to do so. The attached document should include: a brief description of what was acquired without authority; any mitigating statements; and a findings and determination by the Agency head that the statements are accurate, including a Contracting Officer's determination that the price is fair and reasonable, with a recommendation for payment and the concurrence of legal counsel (SOL/ETLS) with that determination.

Item 8. Conflict of Interest Certifications are necessary with each DL 1-490 submitted to the PRB. Approval may not be granted without proper signature. Conflict of Interest certifications are personal to the individual signing and may not be signed or delegated by one person on behalf of another.

NOTE: The Procurement Review Board reviews these requests and makes a recommendation to approve/disapprove to the Assistant Secretary for Administration and Management based on the merits of the case provided in the request.

2953.101 Simplified Acquisition Documentation Checklist DL 1–2216.

The following checklist must be used to document all simplified acquisitions at or below the simplified acquisition threshold.

Simplified Acquisition Documentation Checklist

U.S. Department of Labor

PART I: CHECKLIST - Complete Section A for purchases less than $2,500, or Sections A and B for purchases between $2,500 and $100,000

SECTION A. Micro-purchases - Less than $2,500 (not set aside for small business only; no competition required if price is determined reasonable)

(✓ or blank for N/A)

- ☐ Sufficient funds are available to cover this purchase, and the price reflected on this order is considered fair and reasonable.
- ☐ All Quotation information is properly documented, and applicable/required clearances and/or approvals have been obtained are included in this file
- ☐ See www.jwod.com and **www.unicor.gov.** Required sources of supplies/services, including excess supplies, were reviewed prior to the selection of this vendor (n/a for delivery orders against existing contracts)
- ☐ The vendor does not appear on the List of Parties Excluded from Federal Procurement Programs. Reference http://epls.arnet.gov/
- ☐ This order **does not** represent an unauthorized commitment of funds requiring ratification under FAR 1.602-3 (otherwise attach documentation)

SECTION B. Purchase Between $2,501 and $100,000 (set aside for small business, competition is required for open market orders, schedule comparison is required for GSA/FSS orders)

(✓ or blank for N/A)

- ☐ The order was best value among two or more solicited open market vendors. **Use Form DL 1-2078, if not, complete Parts II and III below.**
- ☐ The requirement was set aside for small business participation only. **If not, complete Part IV below.**
- ☐ The procurement is for Information Technology products or software and has been reviewed for compliance with Section 508 and SmartBuy licenses.
- ☐ The item complies with http://www.eere.energy.gov/femp/procurement/ policies on recycling, and Energy star compliance.
- ☐ If this is a Delivery Order against a GSA/Federal Supply Schedule, at least 3 vendors schedules were reviewed prior to issuing orders.
- ☐ Written Solicitation between $10,000 - $25,000 was displayed in a public place, open market requirements over $25,000 were synopsized.
- ☐ **Service Contract Act.** This is an Open Market Purchase: ☐ primarily a product, ☐ exempt per 29 CFR 541, ☐ Davis-Bacon applicable, or ☐ SCA WD included ☐ (SF98 & 98a issued)

PART II: PRICING MEMORANDUM - Price reasonableness is based on (✓ all that apply)

- ☐ Commercial Catalog Pricing/Published Advertisement (Source Date: _____ Page Number)
- ☐ Market Research or established market prices.
- ☐ Comparison to prior purchase of same or similar item Vendor: _____ Purchase Order No: _____ Date of Order _____ Unit Price:
- ☐ Best Value analysis recommended by Technical Personnel (Specify) _____ (continue on back)
- ☐ Other (i.e. contracting officer knowledge, comparison to independent government estimate) _____

PART III: SOLE SOURCE DOCUMENTATION - Only one source was solicited for the following reason(s) (✓ all that apply)

- ☐ The item is sole source in nature, i.e. copyright/patient, proprietary software/hardware, or original equipment manufacturer, and not available from any other source.
- ☐ Urgent and Compelling - state nature of emergency and reason no competition was obtained (lack of planning is not sufficient reason)

PART IV: LARGE BUSINESS DOCUMENTATION - The requirement is not awarded to a small business because (✓ all that apply)

- ☐ No small businesses were located that can provide the required goods/services
- ☐ No quotes were received from small businesses
- ☐ Quotes received from small businesses were not the lowest prices or the best value (considering quality, delivery, quantity, past performances, etc)

DOCUMENTATION DISTRIBUTION DATE: ☐ Vendor ☐ Finance ☐ Accounting ☐ Requestor ☐ File

ORDER PROCESSED BY: Contract Specialist: _____ (Signature Date)

CONCUR: Contracting Officer: _____ (Signature Date)

DL 1-2216
(10/03)

2953.102 Quotation for Simplified Acquisitions DL 1–2078.

The following form must be used to document all simplified acquisitions above the micro-purchase threshold and below the simplified acquisition threshold. This form may also be used to document commercial acquisitions on a fixed price basis up to $5 million.

Quotation for Simplified Acquisitions
($2,500-$100,000)

U.S. Department of Labor
Acquisition Management Services

1. Effective Date	2. Order Number	3. Quotes	Oral ☐	Written ☐

4. Vendor Solicited

	Telephone Number	Date of Quote	Delivery Offer	FOB Point
Vendor 1. Company Name: Point of Contact: City, State, Telephone: Business Type Person Contacted:				
Vendor 2. Company Name: Point of Contact: City, State, Telephone: Business Type Person Contacted:				
Vendor 3. Company Name: Point of Contact: City, State, Telephone: Business Type Person Contacted:				

Quantity	Description of Product or Service	Vendor 1. Unit Price	Vendor 1. Total Amount	Vendor 2. Unit Price	Vendor 2. Total Amount	Vendor 3. Unit Price	Vendor 3. Total Amount
		Total Amount		Total Amount		Total Amount	

5. Basis for Price Reasonableness

Low Cost or Best Value Based on (Specify)

6. Other Factors Affecting Source (FSS, Etc.)

(Specify)

DL 1-2078
(10/03)

2953.103 Acquisition Screening and Review—over $100,000 DL 1–2004.

The requiring organization must complete the following form for all acquisitions above the *simplified acquisition threshold*. This form will then be submitted through the contracting officer to the Office of Small Business Programs for review.

Acquisition Screening and Review - over $100,000 **U.S. Department of Labor**

A. Originating Agency

1. Purchasing Office
Name:
Street Address:
City: State: Zip:
Phone Number:

2. Date of Purchase Request:

3. Estimated Dollar Value
This FY:_____
Total Contract Value:_____

4. Period of Performance (Include Option Years):

5. Description of Product or Service:

6. Recommended Method of Procurement (Select a method from block 11 below):

7. Signature of Small Business Specialist: Date:

B. Contracting Office

8. Solicitation Number:

9. Estimated Date of Release:

10. Estimated Date of Response/Opening:

11. Check all applicable boxes:

Proposed Method of Procurement
- ☐ GSA - Multiple Award Schedule order
- ☐ Multi-agency contract order
- ☐ Govt-wide acquisition contract order
- ☐ Open Market Buy - Select *one* of the following:
  - ☐ 8(a)/HUBZone sole source (I.D. Proposed Contractor)
  - ☐ HUBZone sole source
  - ☐ 8(a) sole source
  - ☐ HUBZone competition
  - ☐ 8(a) competition
  - ☐ 100% Small Business Set-Aside
  - ☐ Partial Small Business Set-Aside
  - ☐ Unrestricted - Insufficient Small Business (attach justification, proposed subcontracting amounts and evaluation preference for SDB's)

12. NAICS Code and Small Business Size Standard:

13. Proposed Synopsis:
- ☐ Yes
- ☐ No. Per FAR 5.202
- ☐ FEDBIZOPPS
- ☐ Other _____

14. Proposed Issuing Number of Solicitations to:

No.
- ____8(a)
- ____HUBZone
- ____Small Disadvantaged Business (SDB)
- ____Women-Owned Small Business (WOSB)
- ____Service Disabled Veterans-Owned Small Business (SDVOSD)
- ____Veteran-Owned Small Business (VOSB)
- ____Small Business (SB)
- ____Large Business (LB)

15. Is this a bundled procurement? ☐ Yes ☐ No
(If yes - attach supporting documentation/justification)

Procurement History

16. Has Exact Item/Service Been Previously Awarded?
- ☐ Yes (Complete the rest of the section)
- ☐ No

17. Period of Performance:

18. Contract Number:

19. SIC/NAICS Code and Small Business Size Standard:

20. Name, Address and business type of Contractor

_____ ☐ HUBZone
_____ ☐ 8(a)
_____ ☐ SDB
_____ ☐ WOSB
_____ ☐ SDVOSB
_____ ☐ VOSB
_____ ☐ SB
_____ ☐ LB

21. Total Value:

22. Method of Procurement:

23. No. of Responses Received
- _____8(a)
- _____HUBZone
- _____Small Disadvantaged Business (SDB)
- _____Woman-Owned Small Business (WOSB)
- _____Service Disabled Veteans-Owned Small Business (SDVOSB)
- _____Veteran-Owned Small Business (VOSB)
- _____Small Business (SM)
- _____Large Business (LB)

24. Signature of Contracting Officer: Date:

C. Office of Small Business Programs - OSDBU/Small Business Administration Procurement Center Representative

25.
- ☐ I concur with the recommendations.
- ☐ I recommend soliciting additional sources including those on the attached list.
- ☐ I do not concur with the recommendations and request suspension of the procurement action pending an appeal under FAR 19.505.S B A Form 70 is attached.

26. Signature of OSDBU/SBA Procurement Center Representative: Date:

DL-1-2004
Rev. 07-03

[FR Doc. 04–8571 Filed 4–26–04; 8:45 am]
BILLING CODE 4510–23–C

Federal Register

Tuesday,
April 27, 2004

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Riverside Fairy Shrimp (Streptocephalus woottoni); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT45

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Riverside Fairy Shrimp (*Streptocephalus woottoni*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the federally endangered Riverside fairy shrimp (*Streptocephalus woottoni*) pursuant to the Endangered Species Act of 1973, as amended (Act). We propose to designate a total of approximately 5,795 acres (ac) (2,345 hectares (ha)) of critical habitat in Los Angeles, Orange, Riverside, San Diego, and Ventura Counties, California.

We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the two public comment periods.

DATES: We will accept comments until May 27, 2004. Public hearing requests must be received no later than June 11, 2004. A second comment period will be opened upon the publication of the pending economic analysis.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office, at the above address, or fax your comments to 760/731–9618.

3. You may send your comments by electronic mail (e-mail) to *fw1rvfs@r1.fws.gov*. For directions on how to submit electronic filing of comments, *see* the ''Public Comments Solicited'' section below.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Service (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Maps of essential habitat not included in the proposed critical habitat are available for viewing by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov*. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or are not appropriate for exclusion, and in all of these cases, this information would be incorporated into the final designation. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from the designation;

(2) Specific information on the amount and distribution of Riverside fairy shrimp and its habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;

(5) Some of the lands we have identified as essential for the conservation of the Riverside fairy shrimp are not being proposed as critical habitat. The following areas essential to the conservation of the Riverside fairy shrimp are not being proposed as critical habitat: Lands on Marine Corps Air Station Miramar (MCAS, Miramar); ''mission-critical'' training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); areas within San Diego Multiple Species Conservation Program (MSCP) and the Orange County Central-Coastal Natural Communities Conservation Program (NCCP); and areas in the Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). These areas have been excluded because we believe the benefit of excluding these areas outweighs the benefit of including them. We specifically solicit comment on the inclusion or exclusion of such areas and: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating these areas as critical habitat (section 4(b)(2) of the Act);

(6) We request information from the Department of Defense to assist the Secretary of the Interior in evaluating critical habitat on lands administered by or under the control of the Department of Defense, specifically information regarding impacts to national security associated with proposed designation of critical habitat; and

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AT45'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440. Please note that the e-mail address ''*fw1rvfs@r1.fws.gov*'' will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, 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. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA [Act] can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 445, or 36 percent of the 1244 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat (Service 2004). We address the habitat needs of all 1244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for additional public participation beyond those minimally required by the Administrative Procedures Act (APA), the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Please see the prior final rule designating critical habitat for the Riverside fairy shrimp (66 FR 29384; May 30, 2001), which was subsequently vacated, and the Recovery Plan for the Vernal Pools of Southern California (Service 1998) for a general discussion of the biology of this species and vernal pools ecosystems.

Status and Distribution

Prior to the discovery of the Santa Rosa Plateau fairy shrimp and new findings of Riverside fairy shrimp, the Riverside fairy shrimp was believed to have the most restricted distribution of endemic California fairy shrimp (Eng *et al.* 1990, Simovich and Fugate 1992). The range of this species is still among the most limited and includes Ventura, Los Angeles, Orange, San Diego, and Riverside Counties in southern California, and Bajamar in Baja California, Mexico (Brown *et al.* 1993; Service 1998). With the exception of the Riverside County populations, and the population at Cruzan Mesa in Los Angeles County, all populations are within approximately 15 miles (mi) (24 kilometers (km)) of the coast. The U.S. populations of Riverside fairy shrimp range over a north-south distance of approximately 125 mi (200 km).

The known populations of Riverside fairy shrimp can be categorized into core population areas and isolated populations. The core population areas are defined by multiple pools or pool complexes containing Riverside fairy shrimp that are within close proximity (approximately 5 mi (8 km)) of other occupied pools and pool complexes. Isolated populations are defined by single pools or pool complexes known to contain Riverside fairy shrimp that are separated from other known locations by greater than 10 mi (16 km). There are four core population areas and seven isolated populations. The core population areas are located in the Orange County Foothills, Western Riverside County, the southern coastal portion of Camp Pendleton in San Diego County, and Otay Mesa in San Diego County. Isolated populations are found near the City of Moorpark in Ventura County, near the City of Santa Clarita on Cruzan Mesa and at Los Angeles International Airport in Los Angeles County, at March Air Reserve Base (ARB) and near the City of Banning in Riverside County, and in the City of Carlsbad and on Marine Corps Air Station (MCAS) Miramar in San Diego County.

In Ventura County, Riverside fairy shrimp occur within a single large pool in a grassland area at Carlsberg Ranch. Recently, urban development adjacent to this pool appears to have affected the pool's hydrology (Rick Farris, U.S. Fish

and Wildlife Service, personal communication 2003).

In Los Angeles County, the species occurs at the Los Angeles International Airport and Cruzan Mesa. Habitat at the Los Angeles International Airport has been impacted by occasional scraping and draining of pooling areas; however, viable Riverside fairy shrimp cysts persist (U.S. Federal Aviation Administration *et al.* 2003). At Cruzan Mesa, upland vegetation associated with the two occupied pools may have recently been removed, which could result in siltation of these pools (Rick Farris, U.S. Fish and Wildlife Service, personal communication 2003). In the Spring of 2003, a limited number of fairy shrimp cysts likely to be Riverside fairy shrimp were found at Madrona Marsh in the City of Torrence; however, these cysts have not yet been identified conclusively to the species level. Ongoing work is being done in the area to determine if there is a population of Riverside fairy shrimp at Madrona Marsh.

Vernal pools occupied by Riverside fairy shrimp in Orange County occur at the former MCAS El Toro, Edison Viejo Conservation Bank, Saddleback Meadows, O'Neill Regional Park, Live Oak Plaza, Tijeras Creek, Chiquita Ridge, and Radio Tower Road. The Orange County populations of the species occur primarily within vernal pools formed by depressions in slumping earth or impounded ephemeral streams (Riefner and Pryor 1996). Many of these pools have been affected by grazing and urban development (Service 2001). These vernal pool complexes form a chain of pools along the Orange County Foothills. At the south end of this chain is a pool located on the agricultural lease land of Camp Pendleton, and at the north end is the pool on the former MCAS, El Toro.

In Riverside County, there are seven naturally occurring populations, one created population, and a proposed creation of habitat for Riverside fairy shrimp, all of which are located within the planning area for the Western Riverside County MSHCP. The naturally occurring locations are the Banning Pool, the vernal pools on March ARB, the Australia Pool in the Lake Elsinore Back Basin, the Schlinger Pool, the Clayton Ranch Pools (slated for relocation in Fiscal Year 2004–2005), the Scott Road Pool, and the Skunk Hollow Pool and the Field Pool. An artificial vernal pool complex has been created at Johnson Ranch to offset the impacts to a population of Riverside fairy shrimp by the Redhawk Development. Another artificial vernal pool creation is planned on the Clayton Ranch project to offset the taking of Riverside fairy shrimp in the Clayton Ranch Pool mentioned above. Riverside County populations represent the most inland extent of the species' range (Eriksen and Belk 1999). The type locality for the species was located within Riverside County, but has since been extirpated (Eriksen 1988). There were also two pools known to contain Riverside fairy shrimp on, or near, Tribal lands of Pechanga Band of Luiseno Indians, however, the current status of these pools is unknown.

In San Diego County, there are vernal pools that contain Riverside fairy shrimp in the coastal regions of the County. In north coastal San Diego County, the Riverside fairy shrimp occurs in vernal pools on Camp Pendleton and in a pool in the City of Carlsbad. On Camp Pendleton, the Riverside fairy shrimp locations are concentrated in the south coastal section of the base near Interstate 5 (Recon 2001) and a single slump pool, mentioned above, on the northern portion of the base on land leased to the State of California (Michael Brandman Associates 1998). The pools on Camp Pendleton near Interstate 5 occur in an area used for training exercises (Moeur 1998). The pool complex containing Riverside fairy shrimp in Carlsbad is conserved, but it is surrounded by urban development. In central San Diego County, there is a single occupied pool on MCAS, Miramar east of Interstate 15. In southern San Diego County, the species occurs in several pool complexes on Otay Mesa near the U.S./Mexico border. There has been significant work done to restore and enhance vernal pools for listed species, including the Riverside fairy shrimp, at three sites on Otay Mesa; The Cal Terraces site, Otay High School site, and the Arnie's Point site. Other occupied pools on Otay Mesa are threatened by off-road vehicle activity and urban development (Bauder and McMillan 1998; The Environmental Trust 2003).

The Riverside fairy shrimp faces threats throughout its range. These threats can be divided into three major categories: (1) Direct destruction of vernal pools and vernal pool habitat as a result of construction, vehicle traffic, domestic animal grazing, dumping, and deep plowing; (2) indirect threats which degrade or destroy vernal pools and vernal pool habitat over time including altered hydrology (*e.g.*, damming or draining), invasion of alien species, habitat fragmentation, and associated deleterious effects resulting from adjoining urban land uses; and (3) long-term threats including the effect of isolation on genetic diversity and locally adapted genotypes, air and water pollution, climatic variations, and changes in nutrient availability (Bauder 1986; Service 1993).

Previous Federal Actions

Please see the prior final rule designating critical habitat for the Riverside fairy shrimp for a description of previous Federal actions through May 2001 (66 FR 29384; May 30, 2001). For the reasons outlined in that rule, we have determined that the designation of critical habitat for the Riverside fairy shrimp is prudent.

On November 6, 2001, the Building Industry Legal Defense Foundation, Foothill/Eastern Transportation Corridor Agency, National Association of Home Builders, California Building Industry Association, and Building Industry Association of San Diego County filed a lawsuit in the United States District Court for the District of Columbia challenging the designation of Riverside fairy shrimp critical habitat and alleging errors in our promulgation of the final rule. On March 13, 2002, the Court granted the request of the Center for Biological Diversity, Inc. and Defenders of Wildlife, Inc. to intervene as defendants in the case. We requested a voluntary remand, and on October 30, 2002, the Court vacated the designation and ordered the Service to publish a new final rule with respect to the designation of critical habitat for the Riverside fairy shrimp (*Building Industry Legal Defense Foundation, et al.*, v. *Gale Norton, Secretary of the Interior, et al., and Center for Biological Diversity, Inc. and Defenders of Wildlife, Inc.* Civil Action No. 01–2311 (JDB) (U.S. District Court, District of Columbia)).

Critical Habitat

Please see the prior final rule designating critical habitat for the Riverside fairy shrimp for a general discussion on sections 3, 4, and 7 of the Act and our policy in relation to critical habitat (66 FR 29384; May 30, 2001).

Criteria for Defining Essential Habitat

The Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998) outlines areas essential to the conservation of six species, including the Riverside fairy shrimp. The Recovery Plan details the steps that are necessary to stabilize the decline of these species and steps necessary to recover these species to the point where protection under the Act is no longer required. These steps are essential for the conservation of the Riverside fairy shrimp.

The Recovery Plan uses Management Areas to define regional conservation needs. We have used these same Management Areas to assist us in identifying specific areas essential to the conservation of the species. The Recovery Plan identified vernal pool complexes essential for the conservation of the Riverside fairy shrimp. Following the publication of the Recovery Plan, additional populations essential to the conservation of the Riverside fairy shrimp have been located.

The Riverside fairy shrimp has a narrow geographic distribution. Within its range, the species has specialized habitat requirements. The Riverside fairy shrimp requires vernal pools or ephemeral ponds that pool for several months of each year but also have a dry period. These pools do not naturally occur in great abundance, and in recent years, this type of wetland has been degraded and lost to off-road vehicles, grazing, farming, and development.

In this critical habitat proposal we have identified areas that are essential to the conservation of Riverside fairy shrimp. Both core and isolated populations are essential for conservation of a species of limited numbers and distribution (Gilpin and Soulé 1986; Lesica and Allendorf 1995; Lande 1999). We have determined that all of the known locations of Riverside fairy shrimp are essential to the conservation of the species. There are four areas with core population areas of Riverside fairy shrimp occurrences. These areas are defined by complexes of vernal pools or ephemeral ponds that are within 5 mi (8 km) of one another. These occurrences are essential as source populations for this species.

In addition to the core population areas, there are seven outlying or isolated occurrences of the Riverside fairy shrimp. These occurrences may represent unique populations of the Riverside fairy shrimp. Each of these isolated occurrences is greater than 10 mi (16 km) from the other known Riverside fairy shrimp locations. These populations may have genetic characteristics that will allow the species to adapt to changing environmental conditions and give the species an opportunity to colonize or re-colonize potential habitat, therefore, they are essential to the overall long-term conservation of the species (*i.e.*, they may be genetically different from more centrally located populations) (Gilpin and Soulé 1986; Lesica and Allendorf 1995). The specific essential habitat is explained in greater detail below in the Unit Descriptions.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These features are used for all listed species and include, but are not limited to: space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and geographical and ecological distributions of a species.

The specific biological and physical features, otherwise referred to as the primary constituent elements, which comprise Riverside fairy shrimp habitat are based on specific components that provide for the essential biological components of the species as described below.

Space for Individual and Population Growth, and for Normal Behavior

Riverside fairy shrimp are found in vernal pools and ephemeral wetlands that range in size and quality. Some pools, such as the smaller pools on Marine Corps Base, Camp Pendleton, have a surface area of only 300–500 square feet (approximately 30 to 50 square meters) when filled. Other pools that support Riverside fairy shrimp are large when compared to the majority of southern California's vernal pools. For example, the vernal pool at Skunk Hollow has a surface area of approximately 33 ac (13 ha). Further, the associated watersheds of the vernal pools that support Riverside fairy shrimp vary significantly in size. The watershed associated with smaller pools in southern California may only be on the order of a few acres, whereas the watershed associated with the Skunk Hollow pool in western Riverside County is greater than 125 ac (50 ha).

Vernal pools generally occur in complexes. Vernal pool complexes are defined by two or more ephemeral or vernal pools in a larger watershed basin with adjacent upland habitat that together form a matrix of physical and ecological processes. To maintain high-quality vernal pool ecosystems, all components of the matrix must be available and functioning (Service 1998). Most of the remaining pools that support the Riverside fairy shrimp are no longer in a pristine or undisturbed state, yet these pools and the associated matrix of upland habitat continue to provide essential biological and physical features necessary for the conservation of this species. In many of these areas it will be possible to improve the conditions for Riverside fairy shrimp; however, irreversible actions that alter the hydrology of vernal pool ecosystems or infringe on the pool basins threaten the survival of this species.

Water and Physiological Requirements

Temperature, water chemistry, and length of time vernal pools are inundated with water are important factors that effect and potentially limit the distribution of the Riverside fairy shrimp. The water in the pools that support Riverside fairy shrimp typically has low total dissolved solids and alkalinity (means of 77 and 65 milligrams per liter (mg/l) or parts per million (ppm), respectively), corroborated by pH at neutral or just below (6.4–7.1) (Eng *et al.* 1990; Gonzalez *et al.* 1996; Eriksen and Belk 1999). Riverside fairy shrimp have been shown to tightly regulate their internal body chemistry for pool environments that have low salinity and low alkalinity (Gonzalez *et al.* 1996). In a laboratory experiment, Riverside fairy shrimp had difficulty regulating their body chemistry in conditions with concentrations of Sodium ion (Na+) greater than 60 millimoles per liter (mmol/l) (1,380 mg/l) and did not survive in conditions with concentrations higher than 100 mmol/l (2,300 mg/l) (Gonzalez *et al.* 1996). These same experiments also found that Riverside fairy shrimp could not survive in laboratory environments where external alkalinity was higher than 800 to 1,000 mg/l HCO_3^-. Riverside fairy shrimp is found in water temperatures ranging between 50 and 77 degrees Fahrenheit (10 and 25 degrees Celsius) (Hathaway and Simovich 1996). Water within pools supporting fairy shrimp may be clear, but more commonly it is moderately turbid (Eriksen and Belk 1999).

Sites for Breeding, Reproduction and Rearing of Offspring

The Riverside fairy shrimp is restricted to a small subset of long-lasting vernal pools and ephemeral wetlands in southern California because this animal takes approximately two months to mature and reproduce (Hathaway and Simovich 1996). In contrast, the San Diego fairy shrimp, another federally endangered fairy shrimp species found in southern

California, can mature and reproduce in less than one month. Most vernal pools in southern California do not pool for a sufficient amount of time to support the Riverside fairy shrimp. Pools that contain Riverside fairy shrimp usually accumulate water to a depth greater than 10 in (25 cm) and some pools that support this species fill to a depth of 5 to 10 feet (1.5 to 3 meters). In the years that Riverside fairy shrimp successfully reproduce, pools fill for 2 to 3 months and some pools have been reported to stay filled for up to 7 months. Riverside fairy shrimp can survive as cysts for multiple years; therefore, it is not necessary for ideal conditions to exist every year for this species to persist.

Vernal pool ecosystems are highly variable in the length of time pools remain filled, and the Riverside fairy shrimp has adapted to these conditions. One indication that Riverside fairy shrimp have adapted to a system where the conditions needed for success occur infrequently is the low percentage of total cysts that hatch each time a pool fills with water. Since only small percentages of Riverside fairy shrimp cysts hatch in any given year, if the pool dries before the species is able to mature and reproduce, there are still many more cysts left in the soil (cyst bank) that may hatch the next time the pool fills (Simovich and Hathaway 1997). Allowing conditions within the above physical parameters to occur on a naturally cyclic basis is essential to the conservation of the Riverside fairy shrimp. Following reproduction, newly produced cysts either fall to the bottom of the pool or are carried in the brood sac of the female until the pool dries or the female dies and sinks to the bottom of the pool (Eriksen and Belk 1999).

Disturbance, Protection, and the Historical Geographical Distributions

The majority of sites currently supporting the Riverside fairy shrimp have experienced disturbance, some more recently than others and some to a greater extent than others. The pools that support Riverside fairy shrimp are generally found in flat or moderately sloping areas. Many of the pools are in grassland habitats. As a consequence, these areas have been vulnerable to agriculture, cattle grazing, and off-road vehicle activity. For example, many of the pools that currently support Riverside fairy shrimp have been artificially deepened in the past by ranchers to provide water for stock animals (Hathaway and Simovich 1996). This species has only been studied since the late 1980s; therefore, the extent of its historical distribution is not well understood. Current estimates suggest that 90 to 97 percent of vernal pool habitat has been lost in southern California (Mattoni and Longcore 1997; Bauder and McMillan 1998; Keeler-Wolf *et al.* 1998; Service 1998). The conservation and subsequent protection of the few remaining occurrences of Riverside fairy shrimp are essential for its conservation (Service 1998). In some places where the Riverside fairy shrimp is found, such as on the Los Angeles coastal prairie, there were historically larger complexes of vernal pools that no longer exist (Mattoni and Longcore 1997). In other places, like Riverside County, there are multiple locations where the Riverside fairy shrimp may still be found. Because Riverside County has not yet been developed and fragmented to the same extent as Los Angeles County, the Service believes that new occurrences of the Riverside fairy shrimp may still be located in Riverside County.

Pursuant to our regulations, we are required to identify the known physical and biological features, *i.e.*, primary constituent elements, essential to the conservation of the Riverside fairy shrimp, together with a description of any critical habitat that is proposed. In identifying the primary constituent elements, we used the best available scientific and commercial data available. The primary constituent elements determined essential to the conservation of Riverside fairy shrimp are:

1. Small to large pools or pool complexes that have the appropriate temperature, water chemistry, and length of time of inundation with water necessary for Riverside fairy shrimp incubation and reproduction, as well as dry periods necessary to provide the conditions to maintain a dormant and viable cyst bank. Specifically, the conditions necessary to allow for successful reproduction of Riverside fairy shrimp fall within the following ranges:

a. Moderate to deep depths ranging from 10 in (25 cm) to 5 to 10 ft (1.5 to 3 m);

b. Ponding inundation that lasts for a minimum length of 2 months and a maximum length of 5 to 8 months, *i.e.*, a sufficient wet period in winter and spring months to allow the Riverside fairy shrimp to hatch, mature, and reproduce, followed by a dry period prior to the next winter and spring rains;

c. Water temperature that falls within the range of 50 and 77 degrees Fahrenheit (10 and 25 degrees Celsius); and

d. Water chemistry with low total dissolved solids and alkalinity (means of 77 and 65 parts per million, respectively), corroborated by pH within a range of 6.4–7.1.

2. Associated watersheds that provide water to fill the pools in the winter and spring months. The size of the associated watershed varies greatly and cannot be generalized and has been assessed on a case-by-case basis. Factors that affect the size of the watershed include surface and underground hydrology, the topography of the area surrounding the pool or pools, the vegetative coverage, and the soil substrate in the area. Watershed sizes designated vary from a few acres to greater than 100 ac (40 ha).

3. Any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat.

The matrix of vernal pools/ephemeral wetlands, the associated watershed, upland habitats, and underlying soil substrates form hydrological and ecologically functional units. These features and the lands that they represent are essential to the conservation of the Riverside fairy shrimp. All lands identified as essential and proposed as critical habitat contain one or more of the primary constituent elements for the Riverside fairy shrimp.

Special Management Considerations or Protection

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection. As discussed throughout this proposed rule, our previous final designation of critical habitat for the Riverside fairy shrimp (66 FR 29384, May 30, 2001) and in our final recovery plan for the species (Service 1998), the Riverside fairy shrimp and its habitat are threatened by a multitude of factors. Threats to those features that define essential habitat (primary constituent elements) are caused by changes in the hydrology of the vernal pools and their associated watersheds; disturbance to the flora, fauna, and soil in and around the vernal pools; and the invasion of exotic plant and animal species into the vernal pool basin. Habitat loss continues to be the greatest threat to Riverside fairy shrimp. It is essential for the survival of this species to protect those features that define the remaining essential habitat, through purchase or

special management plans, from irreversible threats and habitat conversion.

Changes in hydrology which affect vernal pools or pool complexes are caused by activities that alter the topography or change historical water flow patterns in the watershed. Even slight alterations of the hydrology can change the ponding duration of a pool, which in turn can make the habitat unsuitable for Riverside fairy shrimp. Activities that impact the hydrology include but are not limited to road building, grading and earth moving, impounding natural water flows, and draining of the pool(s). Impacts to the hydrology of vernal pools can be managed through avoidance of such activities in and around the pools and the associated watershed.

Disturbance to the flora, fauna, and soil in and around vernal pools that contain Riverside fairy shrimp can impact the long term sustainability of ecosystems used by Riverside fairy shrimp. Physical disturbances to pools are caused by off-road vehicle traffic, military training activities, agricultural activities, and cattle grazing. These impacts can be ameliorated by educating landowners and managers about the location and value of these resources and requesting that they protect these resources.

Invasive exotic plant and animal species impact Riverside fairy shrimp directly and indirectly. Bullfrogs and African clawed frogs have been reported from some of the pools where Riverside fairy shrimp is found. These exotic amphibians may eat Riverside fairy shrimp. Exotic plant species, such as brass-buttons (*Cotula coronopifolia*) and Pacific bentgrass (*Agrostis avenaceae*), compete with native vernal plant species. Conflicts with exotic species can be managed by removal techniques that do not negatively impact the native species in the vernal pools.

Threats to the features that define habitat essential to the conservation of the Riverside fairy shrimp should be assessed for each site. Sites should be protected from activities that negatively alter or destroy vernal pools. An appropriate management and monitoring plan should address these threats. A potential strategy with appropriate guidelines for the conservation of Riverside fairy shrimp has been elaborated in the Recovery Plan for Vernal Pools of Southern California (Service 1998). As such, we believe that within each area proposed for designation as critical habitat the physical and biological features essential for the conservation of the Riverside fairy shrimp may require some level of management and/or protection to address the current and future threats to the Riverside fairy shrimp and habitat essential to its conservation to ensure the overall recovery of the species.

Methods

In determining areas that are essential to conserve the Riverside fairy shrimp, we used the best scientific and commercial data available. These included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan (Service 1998), regional Geographic Information System (GIS) vegetation, soil, and species coverages (including layers for Ventura, Los Angeles, Orange, Riverside, and San Diego Counties), data compiled in the California Natural Diversity Database (CNDDB), data collected on MCAS, Miramar, and Camp Pendleton, information, data and analysis used to develop regional Habitat Conservation Plans (HCPs), and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. In addition, information provided in comments on the proposed designation and draft economic analysis will be evaluated and considered in the development of the final designation for Riverside fairy shrimp.

As stated earlier, Riverside fairy shrimp occur in ephemeral pools and ponds that may not be present throughout a given year or from year to year. Proposed critical habitat includes a mosaic of vernal pools, ponds, and depressions currently supporting Riverside fairy shrimp and vernal pool vegetation. The proposed critical habitat also includes the upland areas surrounding these ephemeral wetlands that constitute the microwatersheds for the pools. Vernal pool topography is such that the vernal pool fills directly from rain fall or in other cases the topography is such that the pool forms through the subsurface or overland waterflow from the surrounding watershed. Two specific areas have been included in this critical habitat proposal that occur within the geographical area occupied by the species, but have not had focused surveys for Riverside fairy shrimp conducted in them. One of these areas is in Ventura County at a pool referred to as Southeast Tierra Rejada pool; the other is in Riverside County on Santa Rosa Plateau. Both of these locations are essential to the conservation of the Riverside fairy shrimp because they contain the primary constituent elements and occur in areas where the known occurrences of Riverside fairy shrimp are extremely limited. Vernal pools at these locations retain water for sufficient amounts of time to allow for the reproduction of Riverside fairy shrimp. These pools also have rare plants that are associated with known locations of Riverside fairy shrimp. The preservation of both of these areas will provide habitat essential to the conservation of Riverside fairy shrimp, and the persistence of healthy populations of Riverside fairy shrimp in these areas is identified in Vernal Pool Recovery Plan.

After all the information about the known occurrences of Riverside fairy shrimp was compiled, we created maps indicating the essential habitat associated with each of the occurrences. We used the information outlined above to aid in this task. The essential habitat was mapped using GIS and refined using topographical and aerial map coverages. To accomplish this, we first identified and mapped vernal pool basins and ephemeral wetlands supporting the Riverside fairy shrimp that contained the primary constituent elements for the species. Next, based on topographic features such as ridges, mima mounds, and elevational gradients or slopes, the essential watershed associated with the vernal pool basins and ephemeral wetlands that also contained the primary constituent elements for the Riverside fairy shrimp were then mapped. The combined extent of these mapped areas was defined as the essential habitat for the Riverside fairy shrimp. Whenever possible, areas not containing the primary constituent elements, such as developed areas or open water, were not included in the boundaries of proposed critical habitat. However, our smallest unit of mapping is a 100-meter square, so it was not always possible to avoid these areas.

After creating a GIS coverage of the essential areas, we described the boundaries of the essential areas using a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27). The areas were then analyzed with respect to sections 4(a)(3), and 4(b)(2) of the Act, and any applicable and appropriate exclusions were made. The remaining essential areas are the proposed critical habitat. The essential areas, an elaboration on exclusions, and the specific areas proposed for critical habitat are described below. The proposed designation of critical habitat is presented as six different habitat units.

Relationship to Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, the effect on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if we determine, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, the effect on national security, or other relevant impacts such as preservation of conservation partnerships, if we determine that the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

In our critical habitat designations, we have used the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have applied the provisions of this section of the Act to lands essential to the conservation of the subject species to evaluate them and either exclude them from final critical habitat or not include them in proposed critical habitat. Lands which we have either excluded from or not included in critical habitat based on those provisions include those covered by: (1) Legally operative HCPs that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Service National Wildlife Refuge System Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

Relationship of Critical Habitat to Approved Habitat Conservation Plans

Regional HCPs

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. Some areas occupied by the Riverside fairy shrimp involve complex HCPs that address multiple species, cover large areas, and have many participating permittees. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs address impacts in a planning area and create a preserve design within the planning area. Over time, areas in the planning area are developed according to the HCP, and the area within the preserve is acquired, managed, and monitored. These HCPs are designed to implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP, in order to reduce delays in the permitting process. The amount of land in the planning area and preserves for the HCPs in the vicinity of known Riverside fairy shrimp occurrences are presented in Table 1.

TABLE 1.—HABITAT CONSERVATION PLANS (HCPS) AREAS WITHIN THE GENERAL AREA OF THE PROPOSED CRITICAL HABITAT

HCP	Planning area	Preserve area
San Diego Multiple Species Conservation Program (MSCP)	582,000 ac (236,000 ha)	171,000 ac (69,573 ha)
Central-Coastal Orange County NCCP/HCP	208,713 ac (84,463 ha)	38,738 ac (15,677 ha)
Proposed Northwestern San Diego Multiple Habitat Conservation Program (MHCP).	111,908 ac (45,287 ha)	19,928 ac (8,064 ha)
Proposed Southern Subregion NCCP/HCP Orange County	128,000 ac (51,800 ha)	14,000 ac (5,666 ha)
Proposed Western Riverside Multiple Species Habitat Conservation Plan (MSHCP).	1.3 million ac (530,000 ha)	153,000 ac (61,919 ha)

In the case of approved regional HCPs (*e.g.*, those sponsored by cities, counties or other local jurisdictions) that provide for incidental take coverage for the Riverside fairy shrimp, a primary goal is to provide for the protection and management of habitat essential for the conservation of the species while directing development to nonessential areas. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Riverside fairy shrimp. The process also enables us to construct a system habitat that provides for the biological needs and long-term conservation of the species.

Completed HCPs and their accompanying Implementing Agreements (IA) contain management measures and protections for identified preserve areas that protect, restore, and enhance the value of these lands as habitat for the Riverside fairy shrimp. These measures include explicit standards to minimize any impacts to the covered species and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands

are maintained, expanded, and improved for the species that they cover.

In approving these HCPs, the Service has provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and, in some cases, specified third parties. Similar assurances will be extended to future permit holders in accordance with the Service's HCP Assurance (''No Surprises'') rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

Portions of two proposed critical habitat units (Units 2 and 5) warrant exclusion from the proposed designation of critical habitat under section 4(b)(2) of the Act based on the special management considerations and protections afforded the Riverside fairy shrimp habitat through approved and legally operative HCPs or NCCP/HCPs. We believe that in most instances, the benefits of excluding legally operative HCPs from the proposed critical habitat designations will outweigh the benefits of including them. The following represents our rationale for excluding portions of Units 2 and 5 from the proposed critical habitat.

A single subunit of Unit 2 is excluded from proposed critical habitat because it is within the Central-Coastal NCCP/HCP in Orange County. The Central-Coastal NCCP/HCP in Orange County was developed in cooperation with numerous local and State jurisdictions and agencies and participating landowners, including the cities of Anaheim, Costa Mesa, Irvine, Orange, San Juan Capistrano; Southern California Edison; Transportation Corridor Agencies; The Irvine Company; California Department of Parks and Recreation; Metropolitan Water District of Southern California; and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 Federal-or State-listed and unlisted sensitive species within the 208,713 ac (84,463 ha) planning area. We issued an incidental take permit under section 10(a)(1)(B) of the Act that provides conditional incidental take authorization for the Riverside fairy shrimp for all areas within the Central-Coastal Subregion except the North Ranch Policy Plan area.

Portions of Unit 5 are excluded from proposed critical habitat because they are within the San Diego MSCP in southwestern San Diego County. The San Diego MSCP effort encompasses more than 582,000 ac (236,000 ha) and reflects the cooperative efforts of the local jurisdictions, the State, the building industry, and environmentalists. The San Diego MSCP provides for the establishment over the permit term of approximately 171,000 ac (69,573 ha) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species. The San Diego MSCP and its approved subarea plans provide measures to conserve known Riverside fairy shrimp populations on Otay Mesa. In addition, surveys for Riverside fairy shrimp are required in suitable habitat (*i.e.*, vernal pools, ephemeral wetlands, and seasonally ponded areas). These lands are to be permanently maintained and managed for the benefit of the Riverside fairy shrimp and other covered species: however, ''take'' of Riverside fairy shrimp is not included in the MSCP 10(a)(1)(B) permit. The eastern portion of Otay Mesa includes Major and Minor Amendment Areas. These areas require a special permitting process; therefore, we included them in this critical habitat proposal.

There are currently several other regional NCCP/HCP efforts under way in southern California that have not yet been completed but which, upon approval, will provide conservation benefits to the Riverside fairy shrimp (*see* Table 1). Lands within these HCPs, which are in various stages of formulation, are not excluded from consideration for proposed critical habitat. The Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County encompasses approximately 112,000 ac (45,324 ha) within the study area. Currently, seven cities are participating in the development of the MHCP. Coverage for the Riverside fairy shrimp has not yet been determined for this plan and, therefore, we propose critical habitat within the planning area. In addition, the majority of vernal pool habitat supporting Riverside fairy shrimp in the planning area is located on land owned by the North County Transit District. The proposed Southern Subregion NCCP/HCP in Orange County encompasses approximately 128,000 ac (51,799 ha) in its planning area. Jurisdictions and private landowners within the study area include the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, San Clemente, and Rancho Mission Viejo. The Riverside fairy shrimp is being proposed as one of the species covered under this plan. The early versions of this plan convey the importance of conservation of all known occurrences of the Riverside fairy shrimp. The Western Riverside MSHCP is addressed in a separate discussion because the plan is in its final stages of completion.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat may require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or nonexistent. Currently approved and permitted HCPs and NCCP/HCPs are designed to ensure the long-term survival of covered species within the plan area. In an approved HCP or NCCP/HCP, lands that we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCP or NCCP/HCP and its Implementing Agreement (IA). These HCPs or NCCP/HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species and thus provide benefits to the species well in excess of those that would result from a critical habitat designation.

(2) Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include carrying out the assurances provided by the Service to landowners, communities, and counties in return for their voluntary adoption of the HCP, including relieving them of the additional regulatory burden that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it may result in an additional regulatory burden requiring more of them than of

other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs it is likely to be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act. HCPs and NCCP/HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP ''No Surprises'' regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in accordance with the provisions of the Act, are limited to requiring that the specific action being consulted upon not jeopardize the continued existence of the species. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated HCPs and NCCP/HCPs currently approved and implemented within the areas being proposed as critical habitat for the Riverside fairy shrimp. Based on this evaluation, we find that the benefits of exclusion outweigh the benefits of proposing portions of Units 2 and 6 as critical habitat.

The San Diego MSCP in southwestern San Diego County and the Central-Coastal NCCP/HCP in Orange County include the Riverside fairy shrimp as a covered species. These HCP and NCCP/HCPs provide protection for the Riverside fairy shrimp and its associated habitat in perpetuity, although, in the San Diego MSCP, ''take'' of the Riverside fairy shrimp is handled through separate Section 7 consultations or HCP. The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the HCP and NCCP/HCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species, is still accomplished from material provided on our website and through public notice and comment procedures required to establish an HCP or NCCP/HCP. The public has also been informed through the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, we believe that proposing critical habitat has little benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being proposed. We do not believe that this exclusion would result in the extinction of the species because the essential habitat within these two HCPs will ostensibly be conserved.

Relationship of Critical Habitat to the Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) has been in development from 1993 to the present. Participants in this HCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, Riverside County Waste Department; the California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside MSHCP is also being proposed as a subregional plan under the State's NCCP and is being developed in cooperation with the California Department of Fish and Game. Within the 1,260,000 ac (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for sole conservation uses. The proposed conservation of 153,000 ac (62,000 ha) will complement other existing natural and open space areas (*e.g.*, State Parks, Forest Service, and County Park Lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local bond measure to fund the acquisition of land in support of the MSHCP. On November 15, 2002, a Notice of Availability of a Draft Environmental Impact Report (EIS/EIR) and Receipt of an Application for an Incidental Take Permit was published in the **Federal Register** (67 FR 69236). Public comment on these documents was accepted until January 14, 2003. Subsequently, on June 17, 2003, the County of Riverside Board of Supervisors voted unanimously to support the completion of the Western Riverside MSHCP.

Conservation actions within Western Riverside MSHCP planning area will be implemented to promote the long-term conservation of the Riverside fairy shrimp. Although the MSHCP is not yet completed and implemented, significant progress has been achieved in the development of this HCP, including the circulation of the final EIS/EIR, the solicitation of public review and comment, and intra-Service section 7 consultation has been initiated for the issuance of incidental take permit for those species identified for coverage within the draft plan. We are proposing to exclude portions of essential habitat in Riverside County from proposed critical habitat pursuant to section 4(b)(2) of the Act because they are within the planning area boundary for the proposed Western Riverside MSHCP. We are proposing portions of Unit 3 on Federal lands within the planning area boundary of the Western Riverside MSHCP as critical habitat because the activities of Federal agencies are not covered under a section 10(a)(1)(B) permit. Our analysis for excluding portions of Units 3 from proposed critical habitat has been outlined below.

(1) Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved HCPs are small. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act which can prevent adverse modification or destruction of the habitat, but cannot compel positive management or restoration of the habitat for the benefit of the species. In the case of the proposed Western Riverside MSHCP, we must evaluate the impact of the plan on the species for which the participants are seeking incidental take permits, pursuant to section 7 of the Act.

(2) Benefits of Exclusion

Where HCPs are in place, the HCPs and their Implementing Agreements (IAs) include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species. This includes actions for the Riverside fairy shrimp. The Western Riverside MSHCP seeks to accomplish these goals for the Riverside fairy shrimp through the implementation of species-specific conservation objectives. Excluding lands within Unit 3 from the proposed critical habitat will provide several benefits, as follows: (1) exclusion of the lands from the final designation will allow us to continue working with the participants in a spirit of cooperation and partnership; (2) other jurisdictions, private landowners, and other entities will see the benefit of working cooperatively with us to develop HCPs, which will provide the basis for future opportunities to conserve species and their essential habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe the analysis conducted to evaluate the benefits of excluding HCPs from critical habitat versus the benefits of including these lands, which was previously discussed for the exclusion of approved HCPs, is applicable and appropriate for the exclusion of HCPs that are in the final permit decision phase, such as the Western Riverside MSHCP. In the event that the Service does not grant coverage for this species under the Western Riverside MSHCP, we will include the areas essential to the conservation of the riverside fairy shrimp in Unit 3 in the final designation of Critical Habitat. The exclusion of the essential habitat in the Western Riverside MSHCP will not result in the extinction of the Riverside fairy shrimp because measures included within the MSHCP protect and manage areas of long-term conservation value for the Riverside fairy shrimp.

Relationship to Department of Defense Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species.

Section 318 of the Fiscal Year 2004 National Defense Authorization Act (Pub. L. 108–136) amended section 4(a)(3) of the Act to address the relationship of INRMPs to critical habitat. MCAS Miramar has an INRMP in place that provides a benefit for the Riverside fairy shrimp. Camp Pendleton has an INRMP in place that provides a framework for managing natural resources. MCAS El Toro is no longer owned by the Department of Defense and March Air Reserve Base (March ARB) has not yet completed an INRMP. Lands essential to the conservation of the Riverside fairy shrimp on those installations are proposed as critical habitat.

Marine Corps Air Station Miramar

MCAS Miramar completed a final INRMP in May 2000 that provides a benefit to the Riverside fairy shrimp. The INRMP is legally operative and is being implemented. The INRMP identifies sensitive natural resources on the installation and discusses the management and conservation of these areas. MCAS Miramar has identified management areas with different resource conservation requirements and management concerns, and identifies them with five separate levels that correspond to their sensitivity. The majority of vernal pools and habitats that support vernal pool species, including the single known occurrence of Riverside fairy shrimp, are located in ''Level I Management Areas (MAs).'' Preventing damage to vernal pool resources is the highest conservation priority in Management Areas with the ''Level I'' designation. The conservation of vernal pools in this MA is achieved through education of base personnel, proactive measures to avoid accidental impacts, and maintenance of an updated inventory of vernal pool basins and the associated vernal pool watersheds.

Since the completion of MCAS Miramar's INRMP, the Service has received reports on Miramar's vernal pool monitoring and restoration program and correspondence detailing the installation's expenditures on the objectives outlined in its INRMP. MCAS Miramar continues to monitor and manage its vernal pool resources; programs include a study in progress on the effects of fire on vernal pool resources, venal pool mapping and species surveys, and a study of Pacific bentgrass (*Agrostis avenaceae*), an invasive exotic grass found in some vernal pools on the base. During a recent visit to the Riverside fairy shrimp site at MCAS Miramar, natural resources staff indicated that the station has no plans for changes in land use or future developments that would affect the site (D. Boyer, personal communication 2003b). We believe this INRMP benefits this species. The pooling area on MCAS Miramar which supports Riverside fairy shrimp is considered essential for the conservation of this species. This occurrence is included in the Recovery Plan for the Vernal Pools of Southern California with the San Diego County Central Coastal Management Area. In accordance with the amended section 4(a)(3) of the Act, these lands that are essential to the conservation of the Riverside fairy shrimp on MCAS Miramar have not been included in the proposed designation of critical habitat for the species.

Marine Corps Base Camp Pendleton

Under 4(b)(2) of the Act, we have considered the effect of a critical habitat designation on national security. We are, therefore, not proposing critical habitat on ''mission-critical'' training areas on Camp Pendleton. In this proposal we refer areas designated as training areas on maps created by MCB, Camp Pendleton as ''mission-critical'' training areas. Camp Pendleton operates an amphibious training base that promotes the combat readiness of military forces and is the only west coast Marine Corps facility where amphibious operations can be combined

with air, sea, and ground assault training activities year-round. Currently, the Marine Corps has no alternative installation available for the types of training that occur on Camp Pendleton.

The Marine Corps consults with us under section 7 of the Act for activities that may affect federally threatened or endangered species on Camp Pendleton. On March 30, 2000, at the request of the Marine Corps, we initiated a formal consultation regarding their activities on upland areas of Camp Pendleton. The consultation covers approximately 150,000 ac (60,703 ha) of land within the upland areas of Camp Pendleton, including combat readiness operations, air operations, vehicle operations, facility maintenance and operations, fire management, recreation activities, and housing. The upland consultation that addresses vernal pool habitat, the Riverside fairy shrimp, and other species is not yet complete. We are currently working cooperatively with Camp Pendleton to facilitate the completion of this upland consultation.

In order to continue its critical training mission pending completion of the consultation, the Marine Corps has implemented measures it believes will avoid jeopardy to the continued existence of the Riverside fairy shrimp and other listed species within the uplands area and comply with section 7(d) of the Act. In particular, the Marine Corps is implementing a set of ''programmatic instructions'' to avoid adverse effects to the Riverside fairy shrimp.

Critical habitat is being proposed for the Riverside fairy shrimp on some areas of Camp Pendleton that are not considered ''mission-critical'' training areas or are leased to the State of California. Areas proposed as critical habitat for the Riverside fairy shrimp on Camp Pendleton meet the definition of critical habitat in that they contain those primary constituent elements that are essential to the conservation of the species and that may require special management or protection. Based upon our examination of whether Camp Pendleton's INRMP addresses the species, the lands not leased to the State of California may be excluded in the final rule under the section 4(a)(3) of the Act, as amended by provisions referenced above.

(1) Benefits of Inclusion

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. We are already in formal consultation with the Marine Corps on its upland activities to ensure that current and proposed actions will not jeopardize the species' continued existence. Therefore, we do not believe that designation of ''mission-critical'' training areas on Camp Pendleton as critical habitat will appreciably benefit the Riverside fairy shrimp beyond the protection already afforded the species under the Act. Exclusion of these lands will not result in the extinction of the species because the conservation of the Riverside fairy shrimp populations will be addressed through our uplands consultation. The lands involved in this consultation are ''mission-critical'' training areas, and essential populations of the Riverside fairy shrimp occupy them.

(2) Benefits of Exclusion

In contrast to the absence of an appreciable benefit resulting from designation of Camp Pendleton training areas as critical habitat, there are substantial benefits to excluding these areas from critical habitat. Essential habitat for the Riverside fairy shrimp that occurs within ''mission-critical'' training areas on Camp Pendleton is occupied by the species, and, as stated above, consultations to ensure activities do not jeopardize the species' existence have been completed or are in progress. If essential habitat that occurs within ''mission-critical'' training areas is proposed as critical habitat, the Marine Corps would be required to determine if activities would adversely modify or destroy proposed critical habitat, and, if such a determination was made, the Marine Corps would be compelled to conference with us pursuant to the requirements of section 7 of the Act. Additionally, if proposed critical habitat within training areas is included in a final designation, the Marine Corps would likely be compelled to review consultations already completed or in progress to determine if activities may affect designated critical habitat. If a ''may affect'' determination were to be made, the Marine Corps would be further obligated to initiate or reinitiate consultations with us. The Marine Corps would likely feel an increased burden of responsibility to make these determinations, and the potential for them to be obligated to conduct conferences or to reinitiate consultations with us may delay the timely implementation of ''mission-critical'' training activities (Hanlon, Edward Jr., Major General Commanding, U.S. Marine Corps Base, Camp Pendleton letter to Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, April 7, 2000). In addition, should consultation result in a destruction or adverse modification finding, the Corps might be unable to conduct their training in a timely fashion.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We consider specific lands that provide benefits to the Riverside fairy shrimp essential for its conservation. For those areas that are proposed as critical habitat that are not considered ''mission-critical'' training areas or are leased to the State of California, we will complete the balancing analysis under section 4(b)(2) in the final rule. We have considered these lands and excluded the lands in ''mission-critical'' training areas on Camp Pendleton from proposed critical habitat. We are soliciting public review and comment on our decision to consider, but not propose critical habitat for the Riverside fairy shrimp on ''mission-critical'' training areas of Camp Pendleton, based on section 4(b)(2) of the Act. Maps delineating habitat for the Riverside fairy shrimp, overlaid with ''mission-critical'' training areas on Camp Pendleton, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov*. These maps are provided to allow the public the opportunity to adequately comment on these exclusions.

Critical Habitat Designation

The proposed critical habitat includes Riverside fairy shrimp habitat throughout the species' range in the United States (*i.e.*, Ventura, Los Angeles, Orange, Riverside and San Diego Counties, California). Areas proposed as critical habitat are under Federal, State, local, and private ownership. The approximate area of proposed critical habitat by county and land ownership is shown in Table 2. Certain lands that are considered essential to the Riverside fairy shrimp have been excluded from critical habitat based on our 4(b)(2) analysis; the exclusions are summarized in Table 3.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)) BY COUNTY AND LAND OWNERSHIP. ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES

County	Federal*	Local/State	Private	Total
Los Angeles	0 ac (0 ha)	0 ac (0 ha)	638 (258 ha)	638 ac (258 ha)
Orange	1 ac (0 ha)	326 ac (132 ha)	2,156 ac (873 ha)	2,483 ac (1,005 ha)
Riverside	146 ac	0 ac (0 ha)	0 ac (0 ha)	146 ac
San Diego	939 ac (380 ha)	107 ac (43 ha)	971 ac (393 ha)	2,017 ac (816 ha)
Ventura	0	45 ac (18 ha)	466 ac (189 ha)	511 ac (207 ha)
Total	1,086 ac (439 ha)	478 ac (193 ha)	4,231 ac (1,713 ha)	5,795 ac (2,345 ha)

*Federal lands include Department of Defense, U.S. Forest Service, and other Federal land.

TABLE 3.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (AC (HA)), ESSENTIAL AREA, AND EXCLUDED AREA

Area determined to be essential to the conservation of the Riverside fairy shrimp	18,330 ac (7,418 ha)
Area not included pursuant to section 4(a)(3) of the Act due to an INRMP that benefits Riverside fairy shrimp (MCAS, Miramar).	113 ac (46 ha)
Area excluded pursuant to section 4(b)(2) of the Act: Completed and pending HCPs (San Diego MSCP, Orange County Central-Coastal NCCP/HCP and Western Riverside County MSHCP).	9,414 ac (3,810 ha)
Area excluded pursuant to section 4(b)(2) of the Act: ''Mission-critical'' Department of Defense lands (Camp Pendleton).	3,008 ac (1,217 ha)
Proposed Critical Habitat	5,795 ac (2,345 ha)

Lands proposed as critical habitat are divided into six Units, which are based on the Management Areas identified in the Recovery Plan (Service 1998). The Units are generally based on geographical location of the vernal pools, soil types, associated watersheds, and local variation of topographic position (*i.e.*, coastal mesas, inland valley). Descriptions of each unit and the reasons for designating it as critical habitat are presented below.

Map Unit 1: Transverse Range Critical Habitat Unit, Ventura and Los Angeles Counties, California (1,045 ac (423 ha))

The proposed Transverse Range Unit includes the vernal pools at Cruzan Mesa, Los Angeles County, and vernal pools near the city of Moorpark in Ventura County. These vernal pools represent the northern limit of occupied habitat for the Riverside fairy shrimp and are some of the last remaining vernal pools in Los Angeles and Ventura Counties known to support this species. The areas that are proposed for designation of critical habitat in Unit 1 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography. The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support the Riverside fairy shrimp.

There are two subunits of critical habitat near the city of Moorpark in Ventura County. The northernmost of these two subunits is located on what was formerly the Carlsberg Ranch. Development has occurred adjacent to this vernal pool, which is now protected from future development. The other subunit in Ventura County is located a short distance to the south of the Carlsberg Ranch pool. This subunit has not been surveyed for Riverside fairy shrimp; however, it is considered essential due to biotic and abiotic conditions that indicate it is highly likely it provides habitat for Riverside fairy shrimp. This area is currently in private ownership and we are unaware of any plans to develop this site. The subunit in Los Angeles County is located on Cruzan Mesa near the city of Santa Clarita. It is within an area that is being proposed by Los Angeles County as a Significant Ecological Unit in its General Plan. These pools are isolated from the other occurrences of Riverside fairy shrimp, and the Ventura population is isolated from the population at Cruzan Mesa. The preservation and management of these vernal pools are essential for the conservation the populations of Riverside fairy shrimp in the Transverse Range Management Area described by the Recovery Plan.

The occurrences of Riverside fairy shrimp in northern Los Angeles County and in Ventura County represent isolated occurrences at the northern most extent of the range of the Riverside fairy shrimp. Conservation biologists have demonstrated that populations at the edge of a species' distribution can be important sources of genetic variation and represent the best opportunity for colonization or re-colonization of unoccupied vernal pools and, thus, long-term conservation (Gilpin and Soulé 1986; Lande 1999). These outlying populations may be genetically divergent from populations in the center of the range and, therefore, may have genetic characteristics that would allow adaptation in the face of environmental change. Such characteristics may not be present in other parts of the species' range (Lesica and Allendorf 1995).

Map Unit 2: Los Angeles Basin-Orange Management Area, Los Angeles and Orange Counties, California. (3,180 ac (1,287 ha))

The Los Angeles Basin-Orange Management Area encompasses two distinct regions where Riverside fairy shrimp are known to occur: coastal Los Angeles County; and the foothills of Orange County. Along the Los Angeles County coast, there are two Riverside fairy shrimp locations: Los Angeles International Airport and Madrona Marsh. In the past, vernal pools in coastal Los Angeles had a much greater distribution (Mattoni and Longcore 1997). The other region in this Unit includes vernal pools that occur along a north-south band in the Orange County Foothills. The areas that are proposed for designation of critical habitat in Unit 2 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography. The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support the Riverside fairy shrimp.

The Los Angeles Coastal Prairie Unit includes an approximately 198 ac (80 ha) area at the Los Angeles International Airport. This landscape historically included the federally endangered California Orcutt grass (*Orcuttia californica*) and San Diego button-celery (*Eryngium aristulatum* var. *parishii*). This unit also supports versatile fairy shrimp (*Branchinecta lindahli*) and western spadefoot toad (*Scaphiopus hammondii*). Riverside fairy shrimp cysts were first collected east of Pershing Drive in 1997. Considering the extensive habitat once available, populations of Riverside fairy shrimp in this region were likely robust and formed the core population between the limited Cruzan Mesa and Carlsberg Ranch pools (Unit 1) at the northern end of the range of the species, and the pool groups in central and southern Orange County. Conservation of a population of the Riverside fairy shrimp in the coastal region of Los Angeles County is essential to the conservation of the species. This area is essential because it represents the remnants of a large historical vernal pool complex in the Los Angeles Basin. It is likely that this and other isolated populations of Riverside fairy shrimp have unique genetic differences that will contribute to the long-term survival of this species. Research on the San Diego fairy shrimp has shown that geographically distinct populations are genetically distinct as well (Bohonak 2003). The preservation of genetic diversity can also provide insight into the evolutionary history of a species that can be helpful for its future preservation.

This Unit also includes the vernal pools and vernal pool-like ephemeral ponds located along the Orange County Foothills. These pools are found at the Marine Corps Air Station El Toro, Edison Viejo Conservation Bank, Saddleback Meadows, O'Neill Regional Park, east of Tijeras Creek at the intersection of Antonio Parkway and the FTC-north segment, Chiquita Ridge, and Radio Tower Road. These vernal pools are the last remaining vernal pools in Orange County known to support this species (58 FR 41384). These pools represent a unique type of vernal pool habitat much different from the traditional mima mound vernal pool complexes. They are also different from coastal pools at Camp Pendleton and the inland pools of Riverside County. The Orange County vernal pool habitat and essential associated watershed represent the majority of Riverside fairy shrimp habitat within the Los Angeles Basin-Orange Management Area discussed in the Recovery Plan.

The Edison Viejo Conservation Bank is considered essential, but excluded from critical habitat because it is within the Central-Coastal NCCP/HCP. The ephemeral pond on MCAS El Toro is within the boundary of the Central-Coastal HCP planning area. However, because coverage for the Riverside fairy shrimp is not provided on these lands, we are proposing this area as critical habitat. All of the other occurrences of Riverside fairy shrimp mentioned above are included in this Unit.

Map Unit 3: Western Riverside County Critical Habitat Unit, Riverside County, California (146 ac (58 ha))

The Western Riverside County Unit includes vernal pools and ephemeral wetlands that provide essential habitat for the Riverside fairy shrimp. The areas that are proposed for designation of critical habitat in Unit 3 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography. The majority of the pools discussed it this Unit description are excluded from the proposed designation of critical habitat. With the exception of the vernal pools on the Santa Rosa Plateau, all of the areas in this unit are known to be occupied. The pools on Santa Rosa Plateau support vegetation associated with Riverside fairy shrimp (Lathrop and Thorne 1983); however, additional surveys are needed to determine the presence of the Riverside fairy shrimp. This Unit encompasses vernal pools in the general vicinity of the Back Basin of Lake Elsinore, Murrieta, Temecula, Banning, March ARB, and Santa Rosa Plateau. These populations represent the eastern limit of occupied habitat. The pools in Western Riverside County represent a unique type of pool. These pools occur in an inland valley, rather than on a mesa or on the coast. These pools also have much larger watersheds and likely contain unique genetic diversity essential to the long-term conservation of the species. This Unit supports the federally endangered California Orcutt grass (*Orcuttia californica*) and vernal pool fairy shrimp (*Branchinecta lynchi*). Preservation and management of these pools will contribute to the conservation of the Riverside fairy shrimp.

Specifically, this Unit contains the following vernal pools: March ARB pools, Banning pools, the Australia pool, the Clayton Ranch pools, the Johnson Ranch pools, the Scott pool, the Schleuniger Pool, Skunk Hollow and the Field pool, and the pools on Santa Rosa Plateau. The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support the Riverside fairy shrimp. We have excluded the majority of pools in this Unit from proposed critical habitat designation because they are encompassed in the planning area of the Draft Western Riverside MSHCP. The areas that we are proposing for critical habitat are the two vernal pools on March ARB.

Map Unit 4: North San Diego County Critical Habitat Unit, San Diego County, California (397 ac (161 ha))

The North San Diego County Unit includes vernal pools at Camp Pendleton and one pool complex within the City of Carlsbad. The areas that are proposed for designation of critical habitat in Unit 4 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography. The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support the Riverside fairy shrimp.

This Unit encompasses ''mission-critical'' training areas within Camp Pendleton at Los Pulgas Creek in the Oscar Two Training Area and on Upper Stuart Mesa in the Oscar One Training Area, and non-training areas within Camp Pendleton, including lands at the Cockleburr Sensitive Area and lands leased to the State of California that are included within San Onofre State Park and lands along San Mateo Creek. The Recovery Plan includes these pool complexes within the San Diego North Coastal Mesas Management Area. Based on the recent amendments to section 4(a)(3) of the Act, we request specific information from the Department of Defense regarding Camp Pendleton's INRMP and conservation of the Riverside fairy shrimp to assist the Secretary of the Interior in determining if the INRMP provides a benefit to Riverside fairy shrimp. We propose to include the subunits that encompass essential habitat in the Cockleburr Sensitive Area on Camp Pendleton; this area is not known to be a ''mission-critical'' training area. The essential habitat within ''mission-critical'' training areas is excluded, but considered essential for the conservation of the species.

Within the jurisdiction of the City of Carlsbad, one vernal pool complex is located at the Poinsettia Lane train station. This complex is associated with a remnant of coastal terrace habitat and is essential for the conservation of the species in northern San Diego County. This pool is one of the last remaining

coastal occurrences of Riverside fairy shrimp that is not on military land.

Map Unit 5: South San Diego County Critical Habitat Unit, San Diego County, California (1,121 ac (453 ha))

The South San Diego Management Area identified in the Recovery Plan contains several vernal pools essential to the conservation of Riverside fairy shrimp. The areas that are proposed for designation of critical habitat in Unit 3 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography. The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support the Riverside fairy shrimp. This region represents a core area for the species. Pools in this area are threatened by off-road vehicle activity and development. The majority of pools in this area are part of San Diego's MSCP. This plan details a policy of ''no-net-loss'' for vernal pools. There is currently an effort to develop a management plan for vernal pools within the MSCP which will provide further conservation benefit to the Riverside fairy shrimp. Specifically, the Recovery Plan identifies the following vernal pool complexes as essential: J2, 5, 7, 11–21, 23–30. In addition, the Riverside fairy shrimp has recently been located at complex J3, the building site for Saint Jerome's Church, and on east Otay Mesa near the International Border with Mexico. Of these essential locations, only the vernal pools and their watersheds that occur on lands not protected by the MSCP are proposed as critical habitat. The subunits for this region include the J15 complex or Arnie's Point, the watershed for the J29 complex on federally managed land, and the watershed, vernal pools, and ephemeral ponds that occur on east Otay Mesa that are in the Major and Minor Amendment Areas of the MSCP.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence of'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect vernal pool crustaceans or vernal pool plants or their critical habitat will require consultation under section 7. Activities on private, State, or county lands, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be

subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency may directly or indirectly destroy or adversely modify critical habitat for Riverside fairy shrimp include, but are not limited to:

(1) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the Clean Water Act or activities carried out by or licensed by the Environmental Protection Agency (EPA), that could alter the watershed, water quality or water quantity to an extent that water quality becomes unsuitable to support Riverside fairy shrimp, or any activity that significantly affects the natural hydrologic function of the vernal pool system and/or ephemeral pond or depression;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins;

(3) Airport construction, improvement, or maintenance activities funded or authorized by the Federal Aviation Administration;

(4) Sale or exchange of lands by a Federal agency to a non-Federal entity;

(5) Licensing of construction of communication sites by the Federal Communications Commission;

(6) Funding of construction or development activities by the U.S. Department of Housing and Urban Development;

(7) Military training and maneuvers on DOD lands;

(8) Funding and implementation of disaster relief projects by the FEMA and the Natural Resource Conservation Service's Emergency Watershed Program, including erosion control, flood control, and stream bank repair to reduce the risk of loss of property; and

(9) Promulgation and implementation of a land use plan by a Federal agency such as the Bureau of Land Management, U.S. Forest Service, or DOD that may alter management practices for critical habitat.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available, and to consider the economic, national security, and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for Riverside fairy shrimp is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. When published, copies of the draft economic analysis will be available for downloading from the Internet at *http://carlsbad.fws.gov*, by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section)

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite the selected peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment periods on this proposed rule during the preparation of a final rulemaking. Accordingly, the decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing no later than 45 days following the publication of this proposal in the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and will announce the dates, times, and locations of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (groupings and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. As such, the Office of Management and Budget (OMB) has reviewed this rule. The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific

areas as critical habitat and possibly excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the Riverside fairy shrimp. This analysis will also be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

This analysis will be made available for public review and comment. Copies may be obtained from the Carlsbad Fish and Wildlife Office's Internet Web site at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this proposed rule as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, oil and gas production, timber harvesting etc.). We considered each industry individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. In areas where occupancy by Riverside fairy shrimp is unknown, the designation of critical habitat could trigger additional review of Federal agencies pursuant to section 7 of the Act and may result in additional requirements on Federal activities to avoid destruction or adverse modification of critical habitat. There is one area proposed as critical habitat for the Riverside fairy shrimp that is within the geographical area occupied by the species for which the occupancy by the species has not been determined. The area is on private land, but we have not received any information indicating the area is anticipated to be developed. Only those activities involving a Federal agency that may affect designated critical habitat would require consultation with us. In reviewing the activities in this area, we have no information indicating future activities on those areas would involve permitting, authorization or funding by a Federal agency.

We also reviewed 10 formal consultations involving this species that were conducted since its listing under the Act in 1993, including one consultation conducted in 2001 when critical habitat for the Riverside fairy shrimp was previously designated and in place. These formal consultations, which all involved Federal actions, included five construction projects, vegetation management activities, airport construction and improvement, military training, and road construction. These 10 consultations resulted in non-jeopardy biological opinions, including a determination of no adverse modification of critical habitat for the consultation completed during the time when critical habitat for the species was previously designated and in place.

In reviewing these past formal consultations and the activities they involved in the context of the proposed critical habitat, we do not believe the outcomes would have been different in areas designated as critical habitat.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. We have no indication that the types of activities we review under section 7 of the Act will change significantly in the future.

Therefore, we are certifying that this proposed designation of critical habitat is not expected to have a significant adverse impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

The preceding discussion is based on information regarding potential economic impacts that is currently available to us. This assessment of economic effect may be modified prior to publication of a final rule, based on a review of the draft economic analysis currently being prepared pursuant to section 4(b)(2) of the Act, Executive Order 12866, and public comments received during the public comment period. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F. 3d 1277 (10th Cir. 2001).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to it potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and as appropriate, review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for Riverside fairy shrimp. Critical habitat designation does not affect actions of the landowners which do not require federal funding or permits, nor preclude development of HCPs and the issuance of incidental take permits to permit actions which do require federal funding or permits to go forward. This takings assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the Riverside fairy shrimp with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the Riverside fairy shrimp imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed critical habitat in accordance with the provisions of the Act. The rule uses the Universal Transverse Mercator coordinate system, which is identifiable on common topographic maps, as the standard unit description and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs of the Riverside fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government to Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175 (November 9, 2000; 65 FR 67249); and DOI's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis.

Historical records indicate that there were two vernal pools on or near Tribal lands of Pechanga Band of Luiseño Indians that contained Riverside fairy shrimp (Eriksen 1988). After reviewing aerial photographs of the area and meeting with the Tribe's Environmental Coordinator in March 2004, we were unable to confirm these occurrences. It is possible that through additional survey work that these occurrences may be relocated, however, at this time we do not know if the Riverside fairy shrimp occurs on Tribal lands of Pechanga Band of Luiseño Indians. Based on the best scientific data available, we do not believe that there are any lands essential to the conservation of the Riverside fairy shrimp on Tribal lands. As such, we are not including any Tribal lands in proposed critical habitat for the Riverside fairy shrimp.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows: Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Fairy shrimp, Riverside'' under ''CRUSTACEANS'' to read as follows:

17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CRUSTACEANS							
*	*	*	*	*	*		*
Fairy shrimp, Riverside.	Streptocephalus woottoni.	U.S.A. (CA)	Entire	E	512	17.95(h)	NA
*	*	*	*	*	*		*

3. Amend § 17.95 (h) by revising critical habitat for the Riverside fairy shrimp (*Streptocephalus woottoni*) to read as follows:

17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Riverside Fairy Shrimp (*Streptocephalus woottoni*)

(1) Critical habitat units are depicted for Los Angeles, Orange, Riverside, San Diego, and Ventura Counties, California, on the maps below.

(2) Critical habitat includes vernal pools, vernal pool complexes, and ephemeral ponds and depressions and their associated watersheds and hydrologic regime indicated on the maps below and in the legal descriptions.

(3) Within these areas, the primary constituent elements for the Riverside fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support vernal pools or other ephemeral ponds and depressions, and their associated watersheds. The primary constituent elements determined essential to the conservation of Riverside fairy shrimp are:

(i) Small to large pools or pool complexes that have the appropriate temperature, water chemistry, and length, of time inundation with water necessary for Riverside fairy shrimp incubation and reproduction, as well as dry periods necessary to provide the conditions to maintain a dormant and viable cyst bank. Specifically, the conditions necessary to allow for successful reproduction of Riverside fairy shrimp fall within the following ranges:

(A) Moderate to deep depths ranging from 10 in (25 cm) to 5 to 10 ft (1.5 to 3 m);

(B) Ponding inundation that lasts for a minimum length of 2 months and a maximum length of 5 to 8 months, *i.e.*, a sufficient wet period in winter and spring months to allow the Riverside fairy shrimp to hatch, mature, and reproduce, followed by a dry period prior to the next winter and spring rains;

(C) Water temperature that falls within the range of 50 and 77 degrees Fahrenheit (10 and 25 degrees Celsius); and

(D) Water chemistry with low total dissolved solids and alkalinity (means of 77 and 65 parts per million, respectively), corroborated by pH within a range of 6.4–7.1.

(ii) Associated watersheds that provide water to fill the pools in the winter and spring months. The size of the associated watershed varies greatly and cannot be generalized and has been assessed on a case-by-case basis. Factors that affect the size of the watershed include surface and underground hydrology, the topography of the area surrounding the pool or pools, the vegetative coverage, and the soil substrate in the area. Watershed sizes designated vary from a few acres (hectares) to greater than 100 ac (40 ha).

(iii) Soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat.

(4) The matrix of vernal pools/ephemeral wetlands, the associated watershed, upland habitats, and underlying soil substrates form hydrological and ecologically functional units. These features and the lands that they represent are essential to the conservation of the Riverside fairy shrimp. All lands identified as essential and proposed as critical habitat contain

one or more of the primary constituent elements for the Riverside fairy shrimp.

(5) The minimum mapping unit for this designation does not exclude all developed areas, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other lands unlikely to contain the primary constituent elements. However, these areas are not critical habitat and have been excluded from this proposed rule. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

(6) Index map of critical habitat units for the Riverside fairy shrimp follows:

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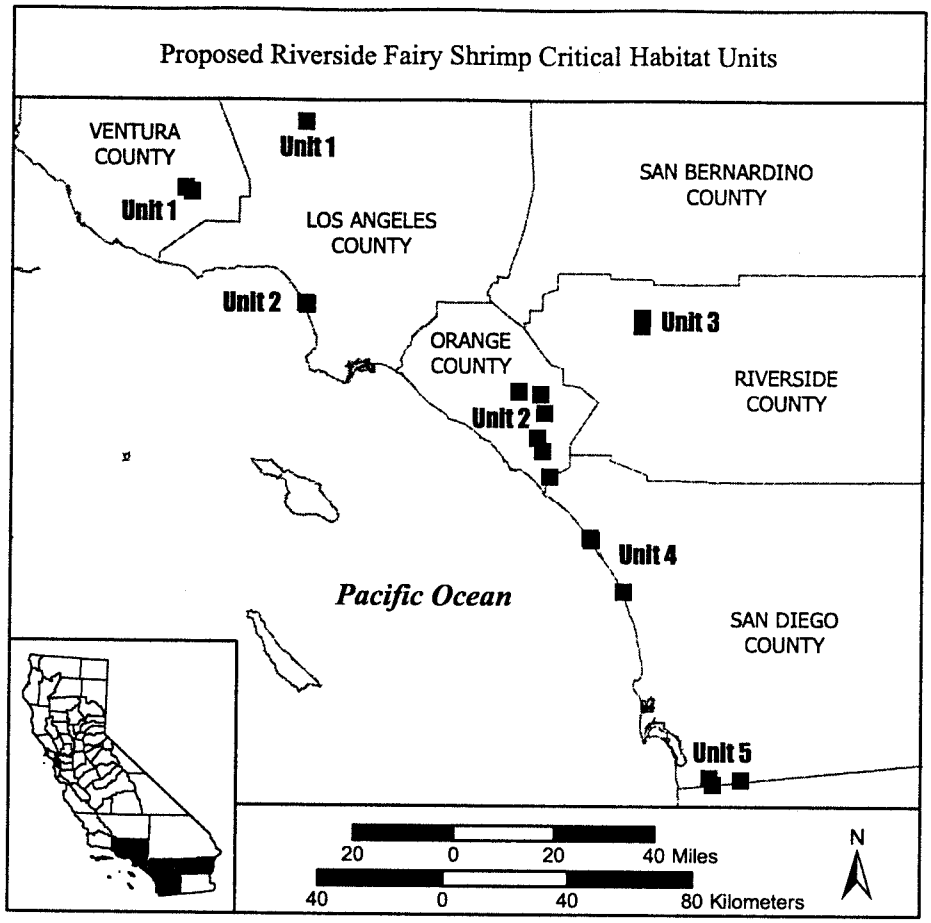


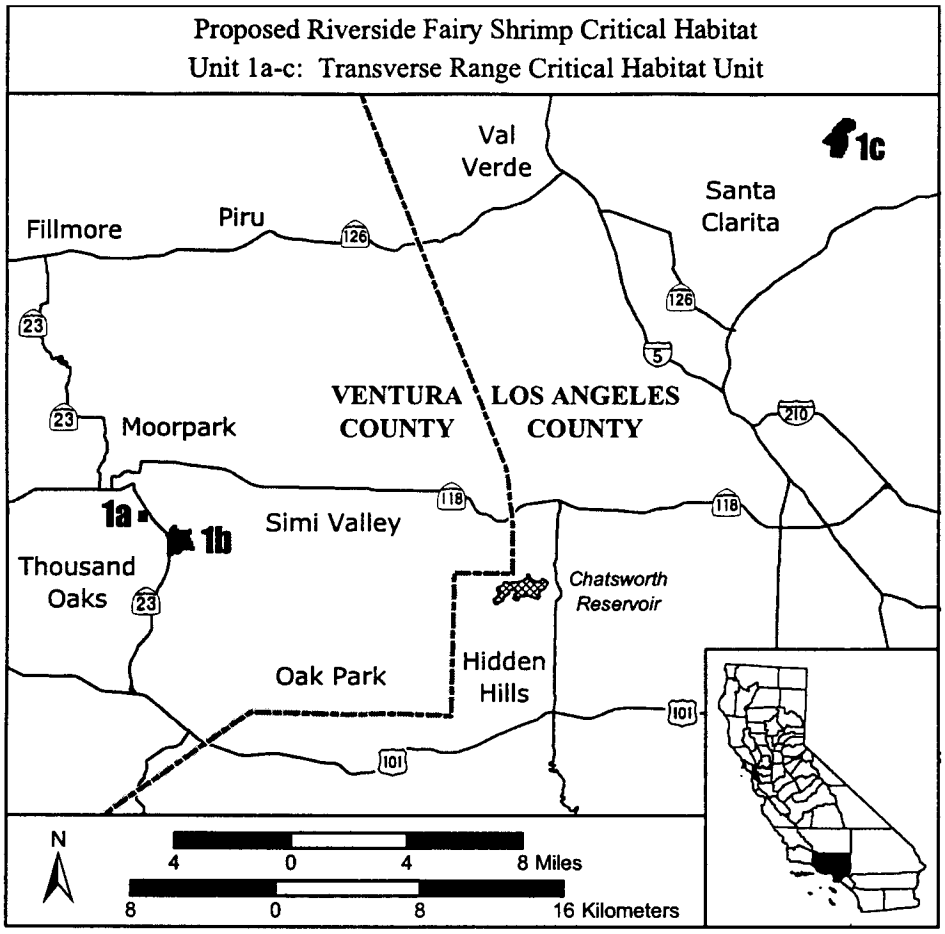
(7) Map Unit 1: Transverse Range, Los Angeles and Ventura County, California. From USGS 1:24,000 quadrangle maps Mint Canyon, Thousand Oaks, and Simi Valley West.

(i) Unit 1a: Lands bounded by the following UTM NAD27 coordinates (E,N): 329000, 3793300; 329500, 3793300; 329500, 3792700; 329000, 3792700; 329000, 3793300.

(ii) Unit 1b: lands bounded by the following UTM NAD27 coordinates (E,N): 330900, 3792500; 331100, 3792500; 331100, 3792300; 331200, 3792300; 331200, 3792200; 331800, 3792200; 331800, 3792300; 331900, 3792300; 331900, 3792000; 331800, 3792000; 331800, 3791800; 331900, 3791800; 331900, 3791600; 332000, 3791600; 332000, 3791300; 332100, 3791300; 332100, 3791100; 331400, 3791100; 331400, 3791000; 331300, 3791000; 331300, 3790900; 330900, 3790900; 330900, 3790800; 330600, 3790800; 330600, 3791900; 330500, 3791900; 330500, 3792000; 330600, 3792000; 330600, 3792100; 330700, 3792100; 330700, 3792300; 330800, 3792300; 330800, 3792400; 330900, 3792400; 330900, 3792500.

(iii) Unit 1c: Lands bounded by the following UTM NAD27 coordinates (E,N): 368000, 3815300; 368400, 3815300; 368400, 3815200; 368600, 3815200; 368600, 3815100; 368700, 3815100; 368700, 3814700; 368600, 3814700; 368600, 3814600; 368400, 3814600; 368400, 3814500; 368200, 3814500; 368200, 3814300; 368300, 3814300; 368300, 3813700; 368200, 3813700; 368200, 3813500; 368100, 3813500; 368100, 3813300; 368000, 3813300; 368000, 3813100; 367400, 3813100; 367400, 3813200; 367300, 3813200; 367300, 3813800; 367100, 3813800; 367100, 3813900; 366900, 3813900; 366900, 3814100; 367000, 3814100; 367000, 3814200; 367100, 3814200; 367100, 3814300; 367200, 3814300; 367200, 3814400; 367300, 3814400; 367300, 3814500; 367400, 3814500; 367400, 3814700; 367500, 3814700; 367500, 3814800; 367600, 3814800; 367600, 3814900; 367700, 3814900; 367700, 3815000; 367800, 3815000; 367800, 3815100; 367900, 3815100; 367900, 3815200; 368000, 3815200; 368000, 3815300.

(iv) Map of critical habitat unit 1a–c for the Riverside fairy shrimp follows:

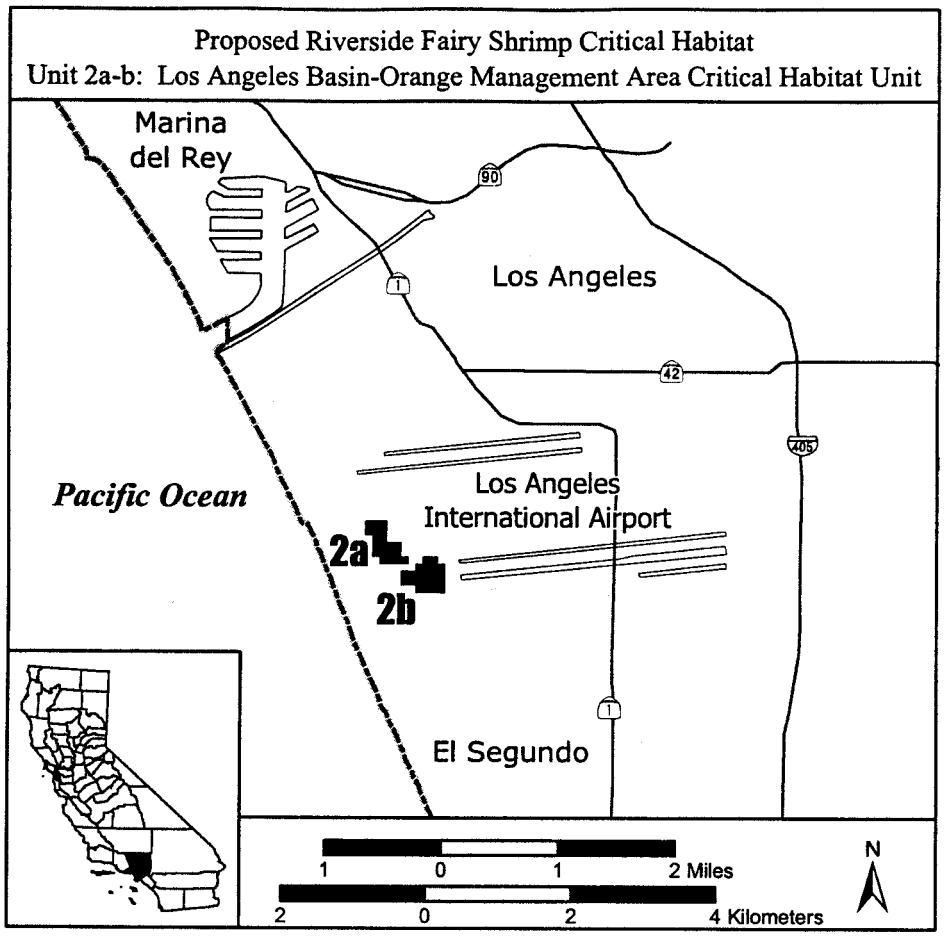


(8) Map Unit 2: Los Angeles Basin-Orange Management Area, Los Angeles, Orange and San Diego County, California. From USGS 1:24,000 quadrangle maps Venice, El Toro, Santiago Peak, San Juan Capistrano, Canada Gobernadora, and San Clemente.

(i) Unit 2a: Lands bounded by the following UTM NAD27 coordinates (E,N): 367600, 3756300; 367900, 3756300; 367900, 3756000; 368100, 3756000; 368100, 3755800; 368200, 3755800; 368200, 3755700; 367800, 3755700; 367800, 3755800; 367700, 3755800; 367700, 3756100; 367600, 3756100; 367600, 3756300.

(ii) Unit 2b: Lands bounded by the following UTM NAD27 coordinates (E,N): 368400, 3755800; 3688600, 3755800; 368600, 3755700; 368700, 3755700; 368700, 3755300; 368300, 3755300; 368300, 3755400; 368100, 3755400; 368100, 3755600; 368300, 3755600; 368300, 3755700, 368400, 3755700, 368400, 3755800.

(iii) Map of critical habitat unit 2a–b for the Riverside fairy shrimp follows:



(iv) Unit 2c: Lands bounded by the following UTM NAD27 coordinates (E,N): 437000, 3727400; 436900, 3727400; 436900, 3727300; 436800, 3727300; 436800, 3727200; 436700, 3727200; 436700, 3727100; 436300, 3727100; 436300, 3727200; 436200, 3727200; 436200, 3727300; 436100, 3727300; 436100, 3727500; 436000, 3727500; thence north to the Marine Corps Air Station (MCAS) El Toro boundary at UTM NAD27 x-coordinate 436000; thence northeast following the MCAS El Toro boundary to UTM NAD27 y-coordinate 3727900; thence east to UTM NAD27 coordinates 436300, 3727900; thence north to the MCAS El Toro boundary at UTM NAD27 x-coordinate 436300: thence northeast following the MCAS El Toro boundary to UTM NAD27 y-coordinate 3728000; thence east to the MCAS El Toro boundary at UTM NAD27 y-coordinate 3728000; thence southeast following the MCAS El Toro boundary to UTM NAD27 x-coordinate 436500; thence south to UTM NAD27 coordinates 436500, 3727900; thence east to the MCAS El Toro boundary at UTM NAD27 y-coordinate 3727900; thence southeast following the MCAS El Toro boundary to UTM NAD27 x-coordinate 436600; thence south to UTM NAD27 coordinates 436600, 3727800; thence east to the MCAS El Toro boundary at UTM NAD27 y-coordinate 3727800; thence southeast following the MCAS El Toro boundary to UTM NAD27 x-coordinate 436700; thence south to UTM NAD27 coordinates 436700, 3727700; thence east to the MCAS El Toro boundary at UTM NAD27 y-coordinate 3727700; thence southeast following the MCAS El Toro boundary to UTM NAD27 x-coordinate 436800; thence south to UTM NAD27 coordinates 436800, 3727600; thence east to the MCAS El Toro boundary at UTM NAD27 y-coordinate 3727600; thence southeast following the MCAS El Toro boundary to UTM NAD27 x-coordinate 436900; thence south to UTM NAD27 coordinates 436900, 3727500; thence east to the MCAS El Toro boundary at UTM NAD27 y-coordinate 3727500; thence southeast following the MCAS El Toro boundary to UTM NAD27 x-coordinate 437000; thence south returning to UTM NAD27 coordinates 437000, 3727400.

(v) Unit 2d: Lands bounded by the following UTM NAD27 coordinates (E,N): 443300, 3726300; 442700, 3726300; 442700, 3726400; 442400, 3726400; thence north to the Central Coastal NCCP (CCNCCP) boundary at UTM NAD27 x-coordinate 442400; thence northeast following the CCNCCP boundary to UTM NAD27 y-coordinate 3726500; thence east to UTM NAD27 coordinates 442500, 3726500; thence north to the CCNCCP at UTM NAD27 x-coordinate 442500; thence northeast following the CCNCCP to UTM NAD27 y-coordinate 3726900; thence east to UTM NAD27 coordinates 442900, 3726900; thence north to the CCNCCP boundary at UTM NAD27 x-coordinate 442900; thence northeast following the CCNCCP boundary to UTM NAD27 y-coordinate 3727400; thence east following UTM NAD27 coordinates 443800, 3727400; 443800, 3727300; 444000, 3727300; 444000, 3727200; 444100, 3727200; 444100, 3727100; 444200, 3727100; 444200, 3725900; 443900, 3725900; 443900, 3725700; 444100, 3725700; 444100, 3724500;

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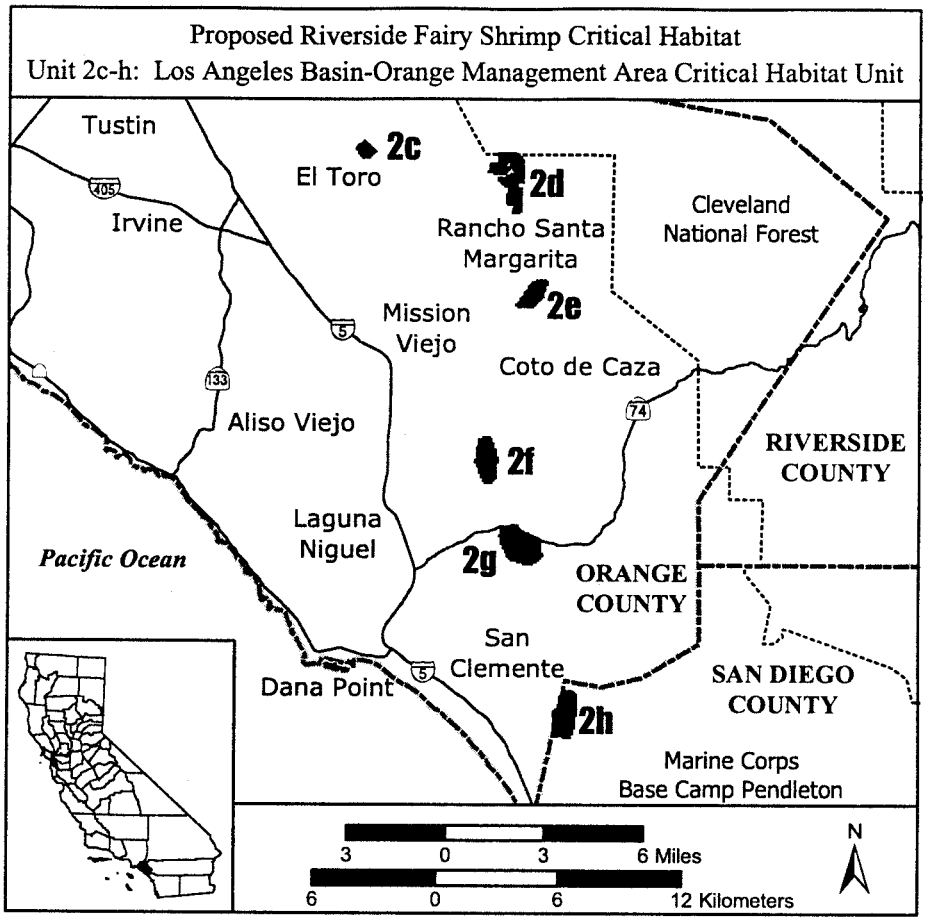
(vi) Unit 2e: Lands bounded by the following UTM NAD27 coordinates (E,N): 444800, 3721200; 445300, 3721200; 445300, 3721100; 445400, 3721100; 445400, 3720900; 445300, 3720900; 445300, 3720600; 445200, 3720600; 445200, 3720300; 445100, 3720300; 445100, 3720200; 445000, 3720200; 445000, 3720100; 444900, 3720100; 444900, 3720000; 444800, 3720000; 444800, 3719900; 444700, 3719900; 444700, 3719800; 443900, 3719800; 443900, 3719900; 443800, 3719900; 443800, 3720000; 443900, 3720000; 443900, 3720100; 444000, 3720100; 444000, 3720300; 444100, 3720300; 444100, 3720400; 444200, 3720400; 444200, 3720600; 444300, 3720600; 444300, 3720700; 444400, 3720700; 444400, 3720900; 444500, 3720900; 444500, 3721000; 444600, 3721000; 444600, 3721100; 444800, 3721100; 444800, 3721200.

(vii) Unit 2f: Lands bounded by the following UTM NAD27 coordinates (E,N): 442200, 3713500; 442600, 3713500; 442600, 3713400; 442700, 3713400; 442700, 3713200; 442800, 3713200; 442800, 3712900; 442900, 3712900; 442900, 3712500; 443000, 3712500; 443000, 3712200; 442900, 3712200; 442900, 3711400; 442800, 3711400; 442800, 3711300; 442700, 3711300; 442700, 3711200; 442300, 3711200; 442300, 3711300; 442200, 3711300; 442200, 3711500; 442100, 3711500; 442100, 3711700; 442000, 3711700; 442000, 3712000; 441900, 3712000; 441900, 3712200; 441800, 3712200; 441800, 3712400; 441900, 3712400; 441900, 3713000; 442000, 3713000; 442000, 3713400; 442200, 3713400; 442200, 3713500.

(viii) Unit 2g: Lands bounded by the following UTM NAD27 coordinates (E,N): 443600, 3709200; 444000, 3709200; 444000, 3709000; 444100, 3709000; 444100, 3708900; 444300, 3708900; 444300, 3708800; 444500, 3708800; 444500, 3708700; 444700, 3708700; 444700, 3708600; 444900, 3708600; 444900, 3708500; 445000, 3708500; 445000, 3708400; 445100, 3708400; 445100, 3707800; 445200, 3707800; 445200, 3707600; 445100, 3707600; 445100, 3707500; 445000, 3707500; 445000, 3707400; 444900, 3707400; 444900, 3707300; 444700, 3707300; 444700, 3707200; 444200, 3707200; 444200, 3707300; 443900, 3707300; 443900, 3707400; 443600, 3707400; 443600, 3707500; 443500, 3707500; 443500, 3707600; 443400, 3707600; 443400, 3707800; 443300, 3707800; 443300, 3708000; 443200, 3708000; 443200, 3708200; 443100, 3708200; 443100, 3708600; 443000, 3708600; 443000, 3708700; 443100, 3708700; 443100, 3709100; 443600, 3709100; 443600, 3709200.

(ix) Unit 2h: Lands bounded by the following UTM NAD27 coordinates (E,N): 446300, 3701100; 446700, 3701100; 446700, 3701000; 446800, 3701000; 446800, 3700900; 446900, 3700900; 446900, 3699800; 446800, 3699800; 446800, 3699200; 446700, 3699200; 446700, 3698900; 446600, 3698900; 446600, 3698700; 446200, 3698700; 446200, 3698800; 445800, 3698800; 445800, 3698900; 445700, 3698900; 445700, 3700100; 445800, 3700100; 445800, 3700200; 445900, 3700200; 445900, 3700400; 446000, 3700400; 446000, 3700800; 446100, 3700800; 446100, 3700900; 446200, 3700900; 446200, 3701000; 446300, 3701000; 446300, 3701100.

(x) Map of critical habitat unit 2c–h for the Riverside fairy shrimp follows:

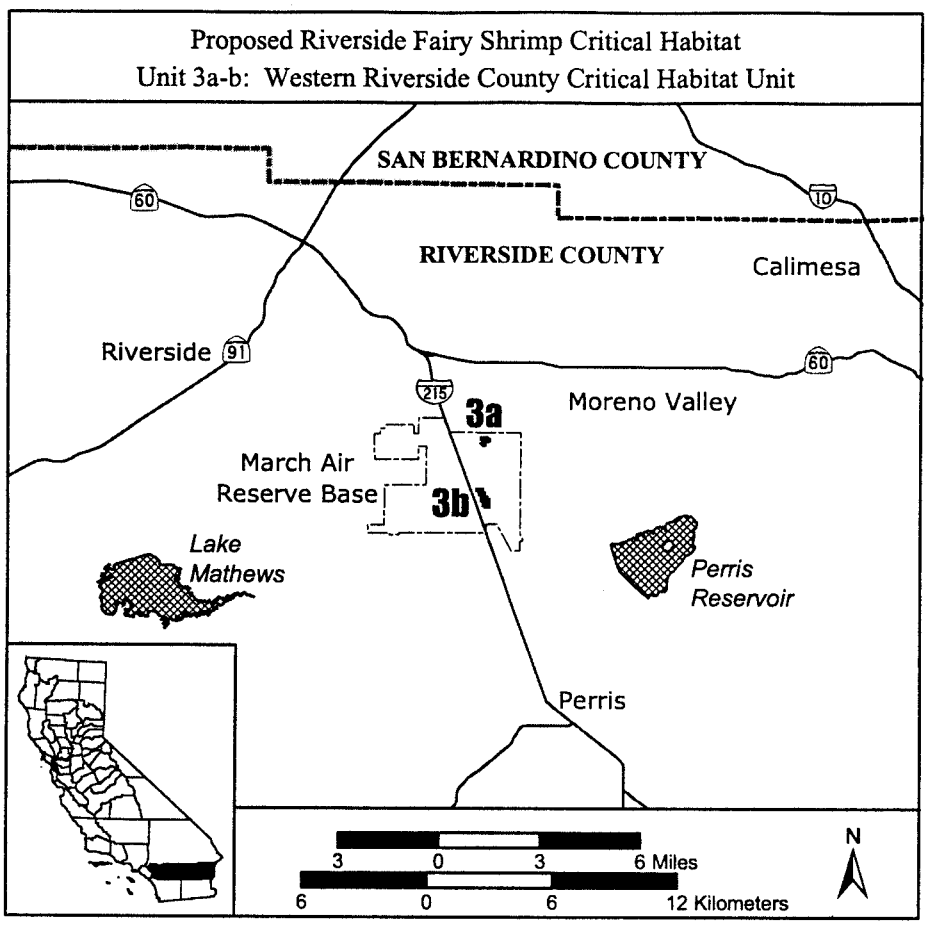


(9) Unit 3: Western Riverside County, Riverside County, California. From USGS 1:24.000 quadrangle map Riverside East.

(i) Unit 3a: Lands bounded by the following UTM NAD27 coordinates (E,N): 475600, 3751900; 476000, 3751900; 476000, 3751800; 476100, 3751800; 476100, 3751600; 475900, 3751600; 475900, 3751400; 475700, 3751400; 475700, 3751500; 475600, 3751500; 475600, 3751600; 475700, 3751600; 475700, 3751700; 475600, 3751700; 475600, 3751900.

(ii) Unit 3b: Lands bounded by the following UTM NAD27 coordinates (E,N): 475400, 3749400; 475800, 3749400; 475800, 3749200; 475900, 3749200; 475900, 3749000; 476000, 3749000; 476000, 3748900; 476100, 3748900; 476100, 3748400; 475800, 3748400; 475800, 3748500; 475700, 3748500; 475700, 3748700; 475600, 3748700; 475600, 3749000; 475500, 3749000; 475500, 3749200; 475400, 3749200; 475400, 3749400.

(iii) Map of critical habitat unit 3a–b for the Riverside fairy shrimp follows:



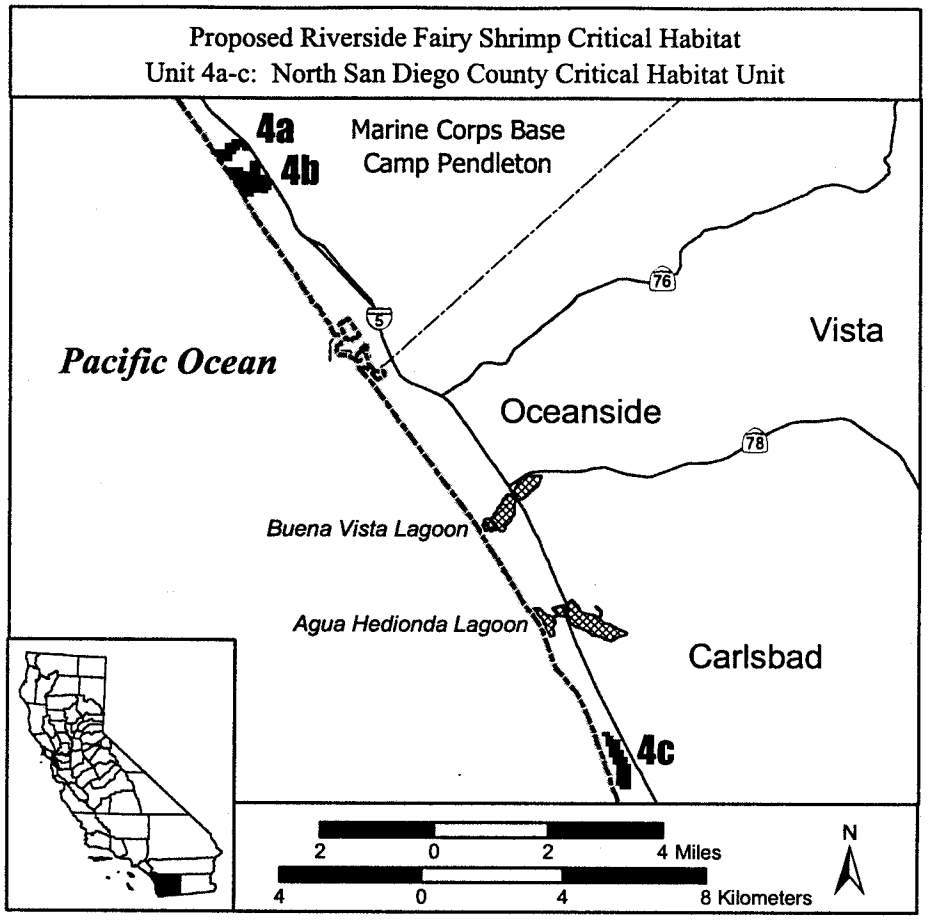
(10) Unit 4: North San Diego County, San Diego County, California. From USGS 1:24,000 quadrangle maps Las Pulgas Canyon and Encinitas.

(i) Unit 4a: Lands bounded by the following UTM NAD27 coordinates (E,N): 459500, 3680600; 459800, 3680600; 459800, 3680500; 459900, 3680500; 459900, 3680400: 460000, 3680400; 460000, 3680300; 459800, 3680300; 459800, 3680400; 459700, 3680400; 459700, 3680300; 459600, 3680300; 459600, 3680200; 459500, 3680200; 459500, 3680000; 459100, 3680000; 459100, 3680100; 459000, 3680100; 459000, 3680300; 459300, 3680300; 459300, 3680500; 459500, 3680500; 459500, 3680600, excluding the Pacific Ocean.

(ii) Unit 4b: Lands bounded by the following UTM NAD27 coordinates (E,N): 460000, 3680000; 460200, 3680000; 460200, 3679900; 460300, 3679900; 460300, 3679600; 460500, 3679600; 460500, 3679500; 460600, 3679500; 460600, 3679200; 460500, 3679200; 460500, 3679100; 460100, 3679100; 460100, 3679000; 459800, 3679000; 459800, 3679100; 459700, 3679100; 459700, 3679200; 459600, 3679200; 459600, 3679400; 459500, 3679400; 459500, 3679500; 459400, 3679500; 459400, 3679700; 459300, 3679700; 459300, 3679800; 459800, 3679800; 459800, 3679700; 460000, 3679700; 460000, 3680000, excluding the Pacific Ocean.

(iii) Unit 4c: Lands bounded by the following UTM NAD27 coordinates (E,N): 470000, 3663800; 470200, 3663800; 470200, 3663700; 470300, 3663700; 470300, 3663600; 470500, 3663600; 470500, 3663300; 470600, 3663300; 470600, 3663100; 470700, 3663100; 470700, 3662900; 470800, 3662900; 470800, 3662200; 470500, 3662200; 470500, 3662300; 470400, 3662300; 470400, 3662900; 470300, 3662900; 470300, 3663100; 470200, 3663100; 470200, 3663400; 470100, 3663400; 470100, 3663700; 470000, 3663700; 470000, 3663800.

(iv) Map of critical habitat unit 4a–c for the Riverside fairy shrimp follows:



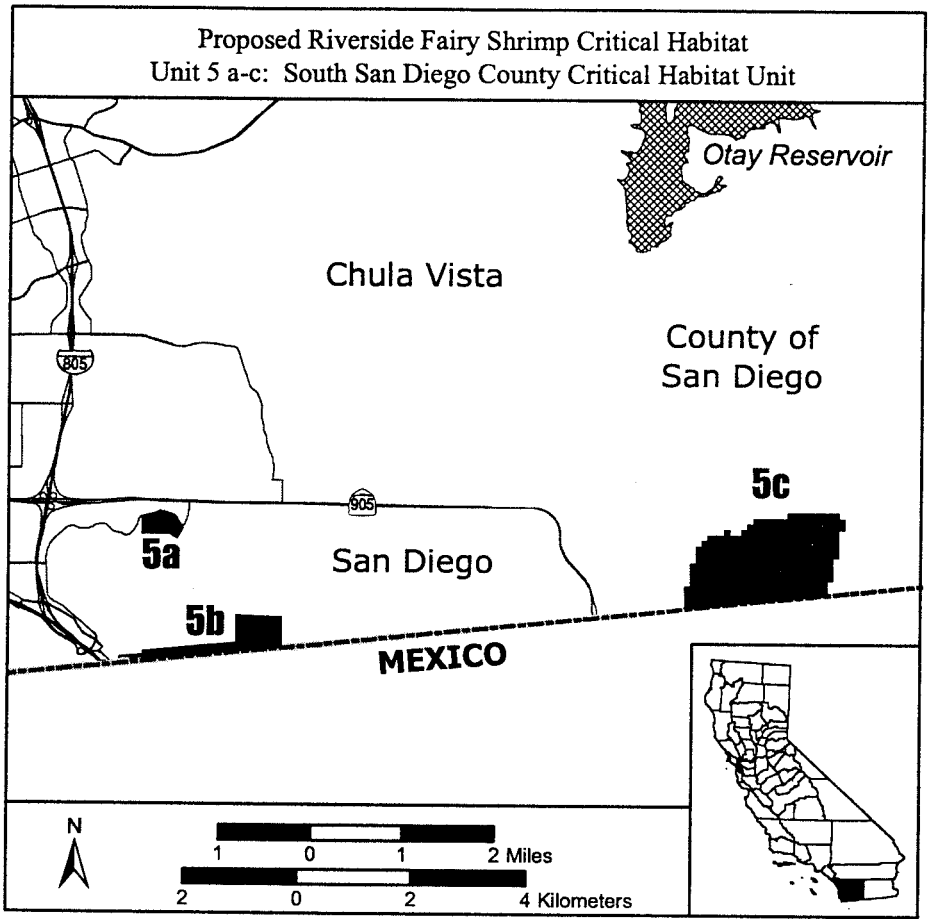
(11) Unit 5: South San Diego County, San Diego, California. From USGS 1:24,000 quadrangle maps Imperial Beach and Otay Mesa.

(i) Unit 5a: Sweetwater Union High School District lands on Otay Mesa and between UTM NAD27 x-coordinates 497800 and 498700.

(ii) Unit 5b: U.S. Federal Government lands on Otay Mesa and between UTM NAD27 x-coordinates 497500 and 500400.

(iii) Unit 5c: Beginning at the Mexico Border at UTM NAD27 y-coordinate 3601400, thence west and following UTM NAD27 coordinates 507400, 3601400; 507400, 3601800; 507500, 3601800; 507500, 3602200; 507600, 3602200; 507600, 3602500; 507700, 3602500; 507700, 3602600; 507800, 3602600; 507800, 3602700; 508100, 3602700; 508100, 3602800; 508200, 3602800; 508200, 3602700; 508400, 3602700; 508400, 3602800; 508500, 3602800; 508500, 3602900; 508600, 3602900; 508600, 3603000; 509200, 3603000; 509200, 3603100; 510100, 3603100; 510100, 3603000; 510200, 3603000; 510200, 3602800; 510100, 3602800; 510100, 3602300; 510000, 3602300; 510000, 3601900; 509900, 3601900; thence south to the U.S./Mexico border at UTM NAD27 x-coordinate 509900; thence west following the U.S./Mexico border; returning to the point of beginning.

(iv) Map of critical habitat unit 5a–c for the Riverside fairy shrimp follows:



Dated: April 15, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–9203 Filed 4–26–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
April 27, 2004

Part V

Department of Labor

Employment and Training Administration

Workforce Investment Act: National Emergency Grants—Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: National Emergency Grants—Application Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of final guidelines for grant applications.

SUMMARY: The Employment and Training Administration of the U.S. Department of Labor (Department or DOL) is announcing policies and procedures for accessing National Emergency Grant (NEG) funds to implement programs pursuant to section 173 of the Workforce Investment Act (the Act or WIA), as amended. Applications prepared and submitted pursuant to these policies and procedures, received as discussed below, will be considered. Grant awards will be made only to the extent that funds remain available.

DATES: The grant application procedures described in these guidelines shall be effective immediately and shall remain in effect until further notice. The policy priorities articulated in the National Emergency Grants Employment and Training Guidance Letter NO.16–03 (TEGL 16–03), dated January 26, 2004, are in effect. Funds are available for obligation by the Secretary of Labor (the Secretary) under Sections 132 and 173 of the WIA, and Section 203 of the Trade Adjustment Assistance Reform Act of 2002. Applications will be accepted on an ongoing basis as the need for funds arises at the state and local levels. Applicants are strongly encouraged to submit applications as early as possible following official notification or occurrence of an eligible dislocation event.

ADDRESSES: In order to comply with the Government Paperwork Elimination Act, the Department is establishing an electronic process that will support both timely submission of applications for funding, in relation to worker eligibility for assistance, and timely processing of such applications. The electronic application procedures must be used to submit applications for NEG funding, once the system becomes operational on July 1, 2004. Once operational, e-applications will be made through the DOL/ETA Grantee Reporting System Internet Web site. Each state has been assigned a Personal Identification Number (PIN) by the Employment and Training Administration's Office of Technical Support, which will be needed to access the NEG electronic application. Appendix A contains copies of the required grant application forms. A user's guide on preparing and submitting a NEG application electronically will be available to eligible grant applicants from the ETA Regional Offices. Technical assistance on the application requirements is available from the appropriate Regional Office or from the Office of National Response, Employment and Training Administration, U.S. Department of Labor, Room N–5422, 200 Constitution Avenue, NW., Washington, DC 20210.

Prior to implementation of the e-application procedures, applications may be mailed, e-mailed or hand-delivered to: Office of Grants and Contract Management, Attention: E. Fred Tello, Grant Officer, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210, (202) 693–2879 (fax number), *tello.fred@dol.gov*. A copy of the application must be simultaneously mailed or delivered to the appropriate Regional Office(s) of the Employment and Training Administration. [A list of the Regional Offices is provided in Appendix B.] It is recommended that hard copy applications be sent via overnight mail or faxed to the attention of Mr. Tello. If sent by mail, please be advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Smith, Administrator, Office of National Response. Telephone: 292/693–3500. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department announces the availability of funds for grants to provide employment-related services and other adjustment assistance for dislocated workers and other eligible individuals as defined in Sections 101, 134 and 173 of WIA; Sections 113, 114 and 203 of the Trade Adjustment Assistance Reform Act of 2002. The application policies and procedures contained in this notice are issued pursuant to the WIA regulations at 20 CFR 671.140. The program announcement consists of two attachments:

Attachment I—The National Emergency Grants Policy Guidance Letter NO. 16–03 (TEGL 16–03), effective as of January 26, 2004, informs all eligible applicants of the policies and priorities that govern the award and use of the Secretary's discretionary funding.

Attachment II—The NEG Assistance-Application Guidelines which consists of eight parts:

- Part I provides background about the purpose and use of NEGs.
- Part II describes eligibility, including eligible circumstances for funding, eligible entities for grant awards, and individuals eligible for assistance.
- Part III identifies the policies governing project management and design requirements for NEGs.
- Part IV provides an overview of the application submission requirements for each type of NEG project.
- Part V identifies the elements in the application review process including the criteria that will be used to determine the appropriateness of the request for funds.
- Part VI describes alternative approaches to grant funding and the requirements associated with emergency funding requests and incremental funding actions.
- Part VII describes the follow-up, planning, oversight and reporting requirements for awarded grants.
- Part VIII describes the grant modification requirements and process.

In addition to the provisions of this announcement, applicants should note that funding actions are subject to the policies priorities articulated in Attachment I of this notice, and any subsequent policy guidance.

Applications for NEG funds may be submitted at any time. Awarded NEG funds may be expended during the months remaining in the Program Year in which the grant award is made plus the subsequent two Program Years. A Program Year is the twelve month period, July 1–June 30. The Employment and Training Administration expects that the project performance period in any NEG application will reflect a time efficient approach to returning eligible individuals to appropriate employment consistent with the performance goals and policies and priorities that apply to NEG projects. Generally, planned project durations should not exceed 24 months.

OMB Approval

Consistent with the Government Paperwork Elimination Act, the information collection, including the application and the reporting form will be, fully, in an electronic format. Electronic applications are intended to provide ease of completion as well as timely processing. The information in the grant application collection provides the grant officer with the necessary information to be able to make

consistent and objective funding decisions based on the stated funding request evaluation criteria. The quarterly reports' information collection assures accountability and measures actual project performance to date. DOL is committed to making a decision to approve or disapprove all submitted requests for funding, which includes an initial application and monetary grant modifications such as requests for incremental funding, within 30 working days from receipt of a complete and responsive request.

These reporting requirements are approved by OMB under control number 1205–0439, expiring 1/31/2007. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N–5422, Washington, DC 20210 (Paperwork Reduction Project 1205–0439).

Reference	Expected total respondents*	Frequency	Expected total responses*	Avg. time per response	Expected burden* (hours)
SF 424	150	1 per project	150	45 minutes	113.0
Narrative summary	150	1 per project	150	1.0 hour	150.0
ETA 9103	150	1 per project	150	90 minutes	225.0
ETA 9105	75	1 per project	75	30 minutes	38.0
ETA 9106	150	1 per project	150	1.0 hour	150.0
ETA 9107	100	1 per project	100	15 minutes	25.0
TAA certification report	50	1 per project	50	30 minutes	25.0
Reports: ETA 9104	150	quarterly per project	600	30 minutes	300.0
Grant modifications	140	1 per project	140	30 minutes	70.0
Total Hours					1,096

*Actual number will vary, because the information collection is required to obtain a benefit.

Signed in Washington, DC on this 16th day of April, 2004.

Emily Stover DeRocco,

Assistant Secretary.

Attachment I—Training and Employment Guidance Letter No. 16–03

Employment and Training Administration, Advisory System, U.S. Department of Labor, Washington, DC 20210.

Classification: National Emergency Grants.

Correspondence Symbol: ONR.

Date: January 26, 2004.

To: All State Workforce Agencies, all State Workforce Liaisons, all State Rapid Response Coordinators, all State Trade Coordinators.

From: Emily Stover DeRocco, Assistant Secretary.

Subject: National Emergency Grant (NEG) Policy Guidance.

1. Purpose

To inform the state and local workforce investment system of the policies and priorities that will govern the award and use of the Secretary's discretionary National Emergency Grant (NEG) Dislocated Worker funds, pursuant to the Workforce Investment Act (WIA), Title I, Section 173, as amended.

2. References

- Workforce Investment Act (WIA), as amended
- Trade Adjustment Assistance Reform Act of 2002 (Public Law 107–210), Sections 201, 202 and 203
- WIA regulations at 20 CFR Part 671
- Training and Employment Guidance Letter (TEGL) No. 14–00, Change 1, ''Guidance on the Workforce Investment Act (WIA) Management Information and Reporting System,'' dated November 19, 2001
- Training and Employment Guidance Letter (TEGL) No. 10–02, ''Use of National Emergency Grant Funds Under the Workforce Investment Act, as amended, to Develop Systems for Health Insurance Coverage Assistance for Trade-Impacted Workers,'' dated October 10, 2002
- Training and Employment Guidance Letter (TEGL) No. 20–02, ''Use of National Emergency Grant (NEG) Funds Under the Workforce Investment Act (WIA), as amended, to Support Health Insurance Coverage Assistance for Trade-Impacted Workers,'' dated March 3, 2003

3. Background

National Emergency Grants (NEGs) are discretionary grants awarded by the Secretary of Labor (the Secretary), pursuant to Section 173 of WIA, as amended. Funds are awarded to provide employment-related services for dislocated workers as authorized under WIA Section 173 and 20 CFR part 671. Funds are reserved and made available for obligation by the Secretary under Sections 132 and 173 of WIA, as amended.

Within the next few months, the Department will publish new application guidelines for NEGs. The new guidelines will reflect the changes made as a result of comments received following the Office of Management and Budget Paperwork Reduction Act clearance process. In conjunction with the issuance of these new guidelines, ETA will implement electronic processes for submitting and reviewing all NEG applications. Use of the electronic application will be required by all applicants for all NEG applications and modifications beginning July 1, 2004 (Program Year 2004). The use of the electronic processes will facilitate a quicker review and processing of NEG applications. The policies articulated in this TEGL are in effect immediately for all application requests for NEG funds.

The new guidelines and the electronic application are designed to achieve timeliness in the application and award of NEG funds to enable dislocated workers to receive employment-related assistance early in their transition period. However, the Department expects that unexpended formula Dislocated Worker program funds will be used to initiate services for workers impacted by mass layoffs and plant closures and, depending upon the amount of unexpended funds, may be sufficient to provide all transition assistance required by workers affected by such layoffs. In addition to the submission requirements contained in the application guidelines, eligible applicants must use the policies and priorities framework communicated in this issuance in determining the appropriateness of NEG funding to respond to a dislocation event and in developing the project design for a proposed NEG application.

The application guidelines will define the basic requirements for NEGs: eligible events, eligible applicants, project types, allowable use of funds, criteria for evaluating applications, and project management. This issuance does not generally repeat those requirements; rather, it provides the policy context for awarding NEG resources and provides the priorities and expectations of ETA in terms of the use of this important source of funding assistance.

ETA is committed to supporting innovative strategies that will help dislocated workers, and the communities in which they live and work, recover economically from the effects of plant closures and mass layoffs. A primary strategy is building a demand-driven workforce system that integrates workforce investment activities with economic development initiatives. Strategies can include both short-term actions—such as responding to skills shortages—and longer-term actions—such as planning customized and other training strategies in support of business expansion and high-growth occupational employment. NEGs are a major tool in implementing these strategies. Another high priority is early intervention to enable workers to return to the workforce (including self-employment) at wages that are as close as possible to their layoff wages in order to help maintain workers' standard of living and promote the economic security of their communities.

This issuance highlights priorities that the Department is using in the award of NEG funds. The Department recognizes, however, that there may be instances where flexibility will be necessary. Therefore, in order to minimize the potential impacts on the timeliness goal, ETA strongly encourages and expects that the appropriate Regional Office will be contacted when an application is being developed that is outside the scope of the funding priorities articulated in this issuance.

4. Policy and Priority Framework for the Use of NEG Funds

a. *Purpose of NEGs.* NEGs are discretionary awards by the Secretary of Labor that are intended to temporarily expand service capacity at the state and local levels by providing time-limited funding assistance in response to significant dislocation events. Significant events are those that create a sudden need for assistance that cannot reasonably be expected to be accommodated within the on-going operations of the formula-funded Dislocated Worker program, including the discretionary resources reserved at the state level. NEG funds are not available to replenish general formula short-falls or fluctuations in the annual Dislocated Worker formula allotment, but must be used in response to specific dislocation events, and in accordance with the policies in this document (including formula expenditures). Maintaining adequate rates of expenditure of available formula funds on a program year-basis will be a major criterion in evaluating the need for NEG funding. These funds include those allocated to local areas as well as those reserved for both rapid response and statewide activities. (See Para. 4. m., below, for additional information.)

b. *Eligible Dislocation Events.* NEG funds are available for significant dislocation events that arise from the effects of economic globalization, business fluctuations and unexpected events (*e.g.*, disasters). Since workers will be eligible for services (upon receipt of layoff notice or company announcement) when an application is submitted, all projects are expected to enroll/register all participants within six months of a grant award.

NEG applications covering the following dislocation events are accepted by ETA for consideration of NEG funding:

(1) *A single company layoff of 50 or more workers.* Priority in funding will be given to applications that document the participation of a large enough group of workers to sustain a separately-funded project. Generally, projects that serve less than 50 workers should be funded with formula Dislocated Worker program dollars, but ETA will examine the sustainability of projects serving smaller groups on a case-by-case basis.

(2) *Multiple company layoffs, where the dislocations from each company impact 50 or more workers.* Priority will be given to applications that demonstrate a sustainable project size. Generally, this standard will be deemed met with the documented planned participation of at least 50 workers from each qualified company. (See Para. 4.c., below, regarding layoffs at secondary firms and Para. 4.b.(4) for community impact applications.)

(3) *Industry-wide layoffs from companies in the same industry as determined by the three-digit code level in the North American Industrial Classification System.* Each layoff in an industry-wide application must have 50 or more workers unless the exception below is met. In order to ensure a consistent statewide approach, we expect to focus our funding of these projects on applications from state applicants. Priority will be given to applications that document the planned participation of 50 or more workers from each company of the identified companies when the affected workers are *not* in the same or geographically contiguous local workforce investment area(s). *Exception:* Where the dislocation events are in the same local workforce investment area—or geographically contiguous areas—one company must have a layoff of more than 50 workers, and other identified companies may have layoffs of less than 50 workers as part of the same application.

(4) *Community impact projects to assist workers in a local workforce investment area (primarily rural) where the employer base is primarily small employers and multiple small dislocations over a six month-period have a significant impact on the unemployment rate of the local workforce area,* as determined by the state. In order to ensure a consistent statewide approach, we expect to focus our funding on applications from state applicants. For single area states, a local commuting area or labor market area should be used. Priority will be given to applications where an increase in the unemployment rate of 1 percent has occurred in the affected local workforce area (or local commuter area or labor market area in single area states) over the previous six months. Each company and location must be identified as with other multiple company applications.

(5) *Trade dual-enrollment projects with identified single or multi-company layoffs of more than 50 workers each,* and where DOL has determined that workers were trade-impacted. The following policies and expectations apply to dual-enrollment applications:

(a) The application and review process for dual-enrollment projects will include consideration of annual planning estimates for expenditure in the year of allotment as issued by the Department for the trade program. This will strengthen the state's ability to project needs and manage Dislocated Worker funds, and improve ETA's ability to evaluate the need for additional training funds for trade-certified dislocated workers.

(b) The primary purpose of dual-enrollment projects is to provide trade-eligible dislocated workers with ''wrap-around'' services that are not available through the trade program, and state formula Dislocated Worker program funds are not sufficient to provide such services, including conducting a comprehensive assessment, developing individual re-employment plans, providing on-going case management, and providing supportive services (WIA core, intensive and supportive services).

As described in Para. 4.m., below, we will take into account the state's success in meeting a 70 percent formula Dislocated Worker program expenditure rate when deciding whether to approve a NEG application.

(c) NEG funds may also be requested to provide training when the state demonstrates that it has spent or will spend by the end of the trade program's fiscal year its annual allotment, reserved trade funds are not available, and the requesting state is meeting the 70 percent expenditure requirement for Dislocated Worker program formula funds (see Para 4.m., below). Consideration of planning estimates and expenditure rates, and state effectiveness at operating the trade program will enable DOL to address resource requests in a timely and rational manner.

(d) Generally, NEG funds awarded for training will be used to fill a temporary gap in trade training funds to ensure that workers who have been appropriately assessed and need training to return to work will have access to such training as soon as possible after dislocation. Systems must be in place to seamlessly accommodate a change in the funding of training, as appropriate.

(e) Before a state applies for NEG funds for training trade-eligible workers, it must have evaluated its trade and WIA Dislocated Worker funds availability in the context of the above expenditure requirements. Any training proposed to be provided with NEG funds to trade-eligible workers must qualify under both the trade and the WIA programs.

(f) All dislocated workers, including those for whom trade petitions have been filed, are required to have access to rapid response, core and intensive services (paid with WIA or other resources available to a state). This assistance should be available prior to a determination of trade certification to limit the period of unemployment. Once a worker has been determined eligible for trade assistance, those services authorized under the trade program (approved training, job search and relocation allowances and transportation) should be funded with trade funds to the extent those funds are available. Participants must sign-off on their individual reemployment plans (including training as appropriate). Trade Readjustment Allowances (income support) are also paid under the trade program. It is the responsibility of state and local program managers to manage WIA and trade program funds in an integrated manner to best meet the needs of the workers and in accordance with all applicable trade and WIA statutes, regulations and federal policies. Discretionary funds, including both the trade reserved funds and NEG resources, may be requested as needed, using application procedures.

(g) In instances where a trade petition has been filed, but no determination has been made, such companies may be included in a NEG application indicating that a petition is pending. In addition, if dislocations impacting trade-certified workers also qualify for industry-wide or community impact projects, those application criteria will also apply, *e.g.*, for a dual-enrollment application that also qualifies as industry-wide (where all layoffs are trade-impacted), an application would be required to have at least one company with 50 or more workers, but other companies could have less than 50 (under the exception criteria).

(6) *Disaster applications.* These applications require verification that the Federal Emergency Management Agency (FEMA) has declared a disaster area eligible for public assistance. The primary purpose of a disaster project is to create temporary employment to assist with clean-up activities. The initial award will restrict the clean-up period to six months from the date of grant award until there is a subsequent modification (*e.g.*, fully documented plan or other request) that justifies a longer clean-up period. A state may include in its fully-documented plan, or modification request, a component for employment-related services. This component of a disaster project is for workers involved in the clean-up work who will not return to their prior employment. The application must demonstrate that the participants need employment-related assistance to return to work and that non-NEG resources are not available to provide such services. The employment-related component must provide information on the number of participants that require assistance, the type of assistance and the duration and planned performance goals. The application must also include the outcomes of those who will not require employment-related assistance through the NEG project.

(7) *Trade Program—Health Coverage Tax Credit (HCTC) Infrastructure projects,* pursuant to the authority in the Trade Act and WIA Section 173(f) and appropriation of funds to help states develop an infrastructure in support of the implementation and operation of the HCTC or health coverage assistance through the NEG ''bridge'' program. Application requirements are outlined in TEGL 10–02, issued on October 2, 2002.

(8) *Trade Program—Health Coverage ''Bridge'' projects,* pursuant to the authority in the Trade Act and WIA Section 173(g) and appropriation of funds to help states provide health coverage assistance through qualified health plans for trade-certified workers who are Trade Readjustment Assistance (TRA) recipients (including those who would be if they had exhausted UI); Alternative Trade Adjustment Assistance (ATAA) wage-subsidy recipients; as well as certain Pension Benefit Guaranty Corporation (PBGC) recipients. The application guidelines are described in TEGL 20–02, issued on March 3, 2003, and additional guidance is forthcoming.

c. *Secondary Workers.* When a regular NEG application is submitted for a primary company layoff of 50 or more workers (or multi-companies with 50 or more layoffs each) and the state makes a determination that there is a secondary worker layoff (including those with 50 or fewer workers being laid-off) where the primary layoff contributed importantly to the secondary layoff, the application may include the secondarily-impacted firm(s). The definition of secondary workers is contained in the NEG application guidelines. Tertiary workers will not be covered in a NEG project unless the dislocation qualifies for a NEG application on its own merits.

d. *NAFTA Secondary Workers.* Although the Trade Act amended the trade program for secondarily-impacted workers so they can access the same services as primary workers, the Department's policy of covering NAFTA secondary workers through NEGs, including needs-related payments, remains in effect for those who are covered under a certification issued prior to November 1, 2002, and for whom a petition has not been filed under the new law.

e. *Rapid Response and Other Early Intervention Assistance.* The value of early intervention assistance, including rapid response, in achieving positive employment and earnings outcomes for dislocated workers has been consistently demonstrated. ETA is committed to the principles of rapid response and other early intervention strategies for assisting dislocated workers as soon as they learn they are going to be laid off. For all regular (single-company, multi-company, industry-wide and community impact) and dual-enrollment projects, NEG applications are expected to reflect the results of the early intervention processes activated through a state's rapid response system.

To maximize the effectiveness of early intervention strategies for dislocated workers, states are strongly encouraged to use the flexibility contained in WIA to provide additional rapid response resources to local areas (WIA Section 134(a)(2)(A)(ii)). At a minimum, funds should be available to commence development of individualized re-employment plans and other required intensive and training employment-related assistance as soon as dislocated workers become eligible for WIA assistance, *i.e.*, upon receipt of a notice of layoff or 180 days (6 months) prior to scheduled closure. Where state and local funds are not available (as reflected by expenditure levels), a NEG application should be submitted quickly to ensure funds are available as soon as possible.

If a trade-petition is being filed, the full array of early intervention services should not be delayed until a petition determination has been made. When provided early intervention assistance, workers will be ready to participate in eligible trade program services if an affirmative finding is rendered by DOL or continue needed assistance under WIA (formula or NEG) if there is a negative petition finding.

f. *Linkage to Economic Development*. The ''power of e-3'' is the ETA reference to the linkage of education, employment and economic development. Linkage with economic development initiatives is a key component for communities developing strategies to help workers, especially those workers affected by mass layoffs and plant closures. The development of any plan and request for NEG funding by a state or local community should be done in conjunction with economic development planning to support current and future economic growth in a community. Much of this planning can and should be done with rapid response and other resources, including any resources provided to states through the Economic Development Administration (EDA) at the U.S. Department of Commerce.

g. *Quality Customer Service*. ETA expects that NEG project designs will provide time-efficient strategies that return workers to appropriate employment as quickly as possible to reduce the adverse impact of the dislocation event on the workers and the local economy. Applications will be evaluated for reasonableness of costs and planned outcomes and timeliness of planned assistance. When NEG funds are requested, it is expected that systems are in place or will be in place quickly to accommodate the needs of the workers, including having temporary personnel available to provide assistance when needed by the workers. Delaying the enrollments of eligible workers over a protracted duration of time due to staffing or other limitations is not an acceptable program design.

NEG projects should take advantage of the pre-layoff eligibility of dislocated workers under WIA (*i.e.*, as soon as an individual layoff notice is received or 180 days prior to a planned closure) and be designed to support employment and wage replacement goals focused on returning individuals to the workforce as soon as possible after layoff. Often, these workers possess high skills and are long-tenured and highly effective workers. Enhanced service strategies should be built into the project design for participants requiring more and longer assistance (such as for limited English-speaking populations or in severely impacted communities). At a minimum, project designs should be demand-driven so that workers are being trained for jobs with career and growth potential.

h. *Integrated Service-Delivery*. NEG projects should be designed to make maximum use of assistance and resources available through One-Stop partners (including ''required'' and ''additional partners''), employers and other state and local organizations. (Under the Trade Act, the trade program is a ''required'' partner.) ''Silo-based'' service policies and procedures are not acceptable. Integrated policies, procedures and approaches will be reviewed and considered as part of the NEG application process.

i. *Reprogramming of NEG Funds*. Federal appropriations law generally prohibits the redirection or reprogramming of funds to serve target populations not originally identified as part of an original grant award (change in scope) or the re-award of returned funds to another grantee, if such actions are executed after the year of appropriation, or after the Department's authority to obligate funds have expired. For instance, Program Year 2003 appropriated funds (which include FY 2004 funds) may be reprogrammed until June 30, 2004, but not thereafter. To ensure that the Department has sufficient time to evaluate and act on such requests, grantees must manage the expenditure of NEG funds and take appropriate action to ensure effective use of the funds. Requests to reprogram excess NEG funds must be received by the Department no later than May 1 of the program year in which the NEG award was made. Therefore, generally, NEGs awarded in the last two months of a program year will not qualify for any reprogramming actions.

j. *Incremental Funding*. To minimize any end-of-project under-expenditure, applicants should expect that most NEG awards will be funded incrementally. In most cases, the initial increment will be for six months to enable a project to achieve full enrollment. The release of subsequent funding increments will be based on a demonstrated need for funds as evidenced by enrolled/registered participants and accrued expenditures. ''Accrued expenditures'' equal actual cash payments, plus the cost of services or goods that have been received or are being provided (*e.g.*, the cost of a semester of tuition that has not been paid but participants are in training).

k. *Performance Management Accountability*. ETA will issue separate guidance on expectations for outcomes for participants served with NEG funds. ETA is announcing policy and will be issuing reporting instructions to implement common performance measures for all federal training and employment programs. The common measures will include entered employment, retention and earnings gain. Beginning July 1, 2004, the common performance measures will be implemented for NEG projects.

l. *Cost Per Participant*. Part of the evaluation of ''reasonableness of costs'' will be a comparison of the average cost per participant in a state's formula Dislocated Worker program with the proposed cost in a NEG application, excluding disaster projects and the NEG ''bridge'' program. In making such an evaluation, ETA recognizes that a two-year project with a limited number of participants may incur a greater cost per participant than the average annual cost for formula participants whose costs may be captured in more than one program year.

m. *Formula Dislocated Worker Program Expenditures*. The expected June 30 annual accrued expenditure rate (see Para. 4. j., above, for the definition of ''accrued expenditures'') for Dislocated Worker formula program funds when applying for NEG resources is 70 percent of ''total available'' (prior year carryover plus annual allotment). A review of each state's success in meeting this rate will be conducted at the end of each program year and will be part of the review of a state's need for NEG funds as applications are received. Quarterly financial reports of formula Dislocated Worker program fund expenditures, as well as recent NEG project experience, will also be factors in determining fundability.

n. *Assistance to Military Personnel*. Assisting military personnel with the

transition to the private workforce is a priority of both the Departments of Defense and Labor. However, except for BRAC-directed closures or realignments of military installations which involve significant dislocations, military personnel who are exiting military service are generally expected to seek and receive transition assistance through such programs using formula funds. This includes those who are completing their commitments as well as those who are being involuntarily, but honorably discharged. Generally, it is expected that the number of personnel is such that local formula funds are available to provide the transition assistance in coordination with veterans' programs available in nearly every community, in addition to the transition assistance provided by the military services and the Department of Labor's Veterans Employment and Training Service. Individuals being dislocated as a result of an announced military installation closure or realignment may be served with NEG funds pursuant to WIA Section 173(c)(2)(A).

o. *Assistance to Military Spouses.* NEG funds may be requested to serve military spouses who qualify as dislocated workers, including those who were required to leave jobs to accompany military spouse members for the convenience of the Government. The number of individuals affected within a six-month period must be provided by the appropriate military branch, and any request for NEG funds must include documentation that demonstrates that formula funds are not adequate to provide the needed level of assistance. Other spouses who do not qualify as dislocated workers under WIA should be served with WIA adult program funds.

p. *Health Insurance Premiums.* The Trade Act of 2002 amended WIA by adding Section 173(g), and appropriated funds to permit the use of NEGs to provide appropriate qualified health coverage assistance for eligible TAA (TRA) recipients, certain TAA individuals who have not exhausted UI benefits, ATAA wage subsidy participants, and certain PBGC recipients. Guidance was issued by the Department in TEGL 20–02 on March 3, 2003. However, based upon recent experience, further guidance is being developed and will be issued.

ETA's policy is that the limited resources available for regular NEGs will not be awarded to pay for health insurance premiums for dislocated workers who do not qualify under the trade program. NEG supportive service funds may be used to pay for emergency medical treatment and needs-related payments—where authorized by local workforce investment boards for the Dislocated Worker formula program. This income support can be used by participants to pay for insurance premiums and other personal expenses.

5. Incomplete Applications

As indicated above, ETA is committed to a shortened NEG application review and decision period through the use of an electronic application process. The electronic system will include edit checks to ensure that applications are complete. Incomplete applications will not be accepted. While this will not always assure that the document contains the information necessary to make funding decisions, we believe this will be an important step. In addition, prior to the implementation of the e-tool, in order to avoid unexplained delays in processing times, upon finding that an application is either incomplete (*e.g.*, lacking SF–424, layoff/rapid response information, budgets, implementation schedules, etc.) or the application does not support the purpose being requested, ETA will send an e-mail to the applicant stating that the application cannot be considered for funding as submitted and will cite the deficiencies. Information to address the deficiencies must be transmitted to ETA by the official signatory. Submission of a complete and fully supported application will establish a new application date.

6. Other Terms

The Department may negotiate and fund projects under terms other than those specified in this TEGL and NEG guidelines, where it can be clearly demonstrated to the Department that such adjustments will achieve a greater positive benefit for the workers and/or the communities being assisted (20 CFR 671.170(b)(5)).

7. Action

NEG applications must be submitted in accordance with these policies and the application guidelines. Please ensure that local workforce investment boards, local elected officials, One-Stop Center operators, rapid response and trade coordinators and other appropriate staff involved in the submission of NEG applications or operation of NEG projects receive this issuance.

8. Inquiries

Questions regarding this transmittal should be directed to the appropriate Regional Administrator or to Ms. Shirley M. Smith, Administrator, Office of National Response, at (202) 693–3500.

Attachment II—Workforce Investment Act: Application Procedures for National Emergency Grants

Overview

The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is announcing policies and procedures for accessing funds to implement the National Emergency Grant (NEG) program under Section 173 of the Workforce Investment Act (WIA), as amended. Funds are available for obligation by the Secretary of Labor (the Secretary) under Sections 132 and 173 of the WIA, and Section 203 of the Trade Adjustment Assistance Reform Act of 2002. Applications will be accepted on an ongoing basis as the need for funds arises at the state and local levels. Applicants are strongly encouraged to submit applications as early as possible following official notification or occurrence of an eligible dislocation event. Grant awards will be made only to the extent that funds remain available.

This application package provides information and procedures by which eligible entities can apply for National Emergency Grant funds to provide workforce investment employment-related services and other adjustment assistance for dislocated workers and other eligible individuals as defined in Sections 101, 134 and 173 of WIA; Sections 113, 114 and 203 of the Trade Adjustment Assistance Reform Act of 2002; and 20 CFR 671.140. It consists of the following eight parts and two appendices:

- Part I provides background about the purpose and use of NEGs.
- Part II describes eligibility, including eligible circumstances for funding, eligible entities for grant awards, and eligible individuals for assistance.
- Part III identifies the policies governing project management and design requirements for NEGs.
- Part IV provides an overview of the application submission requirements for each type of NEG project.
- Part V identifies the elements in the application review process including the criteria that will be used to determine the appropriateness of the request for funds.
- Part VI describes alternative approaches to grant funding and the requirements associated with emergency funding requests and incremental funding actions.

• Part VII describes the follow-up planning, oversight and reporting requirements for awarded grants.

• Part VIII describes the grant modification requirements and process. Appendix A contains copies of the required grant application forms. The forms are in an electronic format to facilitate easy completion and timely submission of the application.

The Department is establishing an electronic process that will support both timely submission of applications for funding, in relation to worker eligibility for assistance, and timely processing of such applications. When the electronic system becomes operational it must be used to submit applications for NEG funding. Procedures for accessing and guidance for using the electronic system will be provided to eligible grant applicants through ETA's Regional Offices.

Appendix B contains a directory of Regional Office contacts.

Applications for NEG funds may be submitted at any time. Awarded NEG funds may be expended during the months remaining in the Program Year in which the grant award is made plus the subsequent two Program Years. A Program Year is the twelve month period, July 1–June 30. The Employment and Training Administration expects that the project performance period in any NEG application will reflect a time efficient approach to returning eligible individuals to appropriate employment consistent with the performance goals that apply to NEG projects. Generally, planned project durations should not exceed 24 months.

The application procedures, application review process, and project oversight and reporting requirements described in this notice are issued under the WIA regulations as 20 CFR 671.125.

For further information on these guidelines, you may contact Shirley M. Smith, Administrator, Office of National Response at (202) 693–3500. (This is not a toll-free number.)

Part I: Background

National Emergency Grants (NEGs) are discretionary awards by the Secretary of Labor. NEGs are time-limited interventions intended to temporarily expand the service capacity at the state and local area levels by providing funding assistance in response to significant dislocation events. NEGs are not intended to meet shortfalls that may occur in formula funding to states for dislocated worker assistance. States are expected to make full use of WIA and Wagner-Peyser formula funds that are allotted for dislocated worker and adult assistance, including the use of funds reserved at the state-level for Rapid Response and statewide activities and funds allocated among all local areas.

Responsive and responsible use of NEG funds requires a system-based collaboration between the state and local entities that are charged with providing assistance to workers affected by significant dislocation events and the federal agency that manages the national fund account. This collaboration must operate in a manner that ''puts the right amount of money in the right place at the right time.'' Inefficiencies in this collaboration are defined by delayed funding actions (*i.e.*, in relation to the time at which services are needed by eligible workers), unexpended funds caused by inaccurate estimates of the amount of funding needed to respond to the dislocation event, and delayed, unresponsive implementation plans for assisting the affected workers. Correcting these inefficiencies is a shared responsibility by the applicant/grantee and ETA. A request for NEG funds is expected to flow from an analysis of the need for reemployment assistance generated by an eligible event taking into account funds available in the state and local areas to respond to the need.

The approach to NEG grant awards will be centered on quick turnaround initial funding actions where the following can be demonstrated:

• There is an eligible circumstance for funding, with a group of workers who are currently eligible to receive assistance.

• An early intervention strategy has been initiated.*

• Per-participant expenditure levels are consistent with the formula program experience in the proposed project service area.*

• There is a plan for timely enrollment of eligible workers into assistance and expenditure of requested funds.

• Overall project performance goals are consistent with supporting the achievement of the Secretary's goals for dislocated worker assistance.

• The state in which the project is to be implemented is maintaining an acceptable rate of usage of formula funding for dislocated worker assistance.*

[**Note:** * These do not apply to Disaster and Trade Health Coverage Assistance projects.]

The application submission requirements have been streamlined to focus on those information items and planning decisions that should be available and feasible within the time period in which some level of funding assistance is needed. DOL is committed to making a decision to approve or disapprove all submitted requests for funding, which include an initial application and monetary grant modifications such as requests for incremental funding, within 30 working days from receipt of a complete and responsive request. Note, however, that if the applicant chooses to submit an unsolicited revision to a previously submitted request that is undergoing review, the 30-day processing time period starts over. Additionally, because experience with worker dislocations has consistently demonstrated that actual project requirements often vary from initial planning assumptions (*i.e.*, on factors such as participation levels and intensity of reemployment assistance needs), most NEG requests will be funded incrementally.

Although the streamlined application requirements will be sufficient to make an initial funding decision, particularly under an incremental funding approach, this information will not be sufficient for determining if there is a reasonable and appropriate plan for implementing the project. Therefore, as a condition of the grant award, recipients will be required to develop a more complete project operating plan, including executed project operator agreements, line item budgets, staffing plans and participant registration and assessment information. The operating plan should be completed and transmitted to the Regional Office within 90 calendar days after the grant award. Information contained in the operating plan and project implementation experience will be used by ETA to determine the full amount of NEG funding needed to adequately respond to the dislocation event.

Part II: Eligibility

A. Eligible Circumstances for Funding

NEG funds may be used to provide assistance in the following circumstances:

• Plant closures and mass layoffs affecting 50 or more workers at a single site of employment;

• Layoffs at several companies in a single local community including layoffs not meeting the single site criterion that, in total, have significantly increased the total number of unemployed individuals in the community. [This criterion will only apply at the local area level and the layoffs must be concentrated within the six months preceding the date of application.] Priority will be given to those applications where the layoffs

resulted in an increase of 1 percent in the local area unemployment during the preceding 12 months.

• ''Community'' is defined as a designated local workforce investment area (LWIA). In cases including single state workforce areas, ''community'' is defined as a labor market area:

• Layoffs at multiple locations with employers who are in the same industry sector (defined at the three digit code level in the North American Industrial Classification system), of which at least one company must have a layoff of more than 50 workers, and other individual companies may have layoffs of less than 50 workers as part of the same application;

• Layoffs at multiple locations (multi—company) that occur within a 4—month period and in which each layoff impacts 50 or more workers;

• Closures and realignments of military installations;

• Emergencies or disasters that have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA); and

• Special assistance, including health insurance coverage assistance, to trade—impacted workers and other individuals eligible under the Trade Adjustment Assistance Reform Act of 2002.

The Secretary may determine that other circumstances are appropriate for NEG funding.

The provisions of WIA and the Regulations define four NEG project types:

• Regular, which encompasses plant closures, mass layoffs, multiple layoffs in a single community, multiple layoffs in an industry sector, other multi—company layoffs and closures or realignments of military installations.

• Disaster, which includes all natural and manmade disaster events that FEMA has declared eligible for public assistance. A declaration by the Governor of a state is not sufficient to receive funding assistance. A grant application may be submitted by the state if the Governor has requested such a declaration from the President but a grant award cannot be made without the appropriate FEMA declaration.

• Trade—WIA dual enrollment, which is intended to ensure that a full range of services is available to trade-impacted individuals where such services are not available through the regular Trade Adjustment Assistance program. To receive assistance with NEG funding, an individual is required to be eligible for dislocated worker assistance through WIA.

• Trade Health Insurance Coverage assistance, which provides special health insurance coverage assistance through partial payment of health insurance premium costs under approved plans, supportive services, and income assistance to targeted individuals defined in the Trade Adjustment Assistance Reform Act of 2002.

For Regular projects, applicants may submit a single application to cover eligible layoffs at multiple employers and/or employment sites. The acceptable conditions for multiple event applications are:

—Where the state is the applicant, independently eligible events (i.e., layoffs of 50 or more) that have occurred within the state during the 120-day period (4 months) preceding the date of application;

—Where a local board, or consortium of local boards, is the applicant, all layoffs must be within the service area of the local board, or the area covered by the consortium agreement, and must meet the 50 or more threshold and have occurred within the 120-day period preceding the date of application;

—An application for an industry-wide project which can include layoffs of less than 50 as long as the firms are within the three digit NAIC sector cited in the application;

—Layoffs at supplier firms to a primary firm that meet the definition of primary and secondary firms in the Trade Act. The application must plan assistance to the primary firms, where the layoff must be 50 or more, and to the supplier firm(s), where the number of layoffs may be less than 50.

When an application is being submitted for an industry-wide project, the applicant must indicate on the Project Synopsis that the eligible event is ''industry-wide.''

B. Eligible Entities for Grant Awards

Entities that are eligible to receive a NEG grant for a Regular Project are:

1. For Eligible Intrastate Projects:

—The designated state WIA program grantee agency

—A LWIA (and its fiscal agent)—

—A consortium of local boards for adjoining local areas

—A designated organization receiving WIA funding through the Native American Program provision of the Act

2. For Interstate Projects:

—A consortium of local boards for adjoining local areas.

—A consortium of states.

For consortium arrangements, one of the eligible entities must be designated to serve as the grant applicant and recipient. Consortium arrangements must be supported by a formal Memorandum of Understanding (MOU) that is executed among the participating local boards/states.

DOL expects that states, as the entities responsible for ensuring the effective use of all funds within the state to respond to worker dislocations, will either assume the role of grantee or will work collaboratively with local board applicants to ensure an effective intervention strategy through Rapid Response and verify the need for the requested NEG funds to provide assistance to the eligible workers.

Eligible applicants for Disaster projects, projects to provide special assistance to trade-impacted workers (i.e., both Dual Enrollment and Health Insurance Coverage), and industry-wide projects are limited to states.

In those cases where the state is the grantee but the project will operate in one or more designated local areas, the state may want to consult with applicable local area Workforce Investment boards in the development of applications for NEG funds.

C. Eligible Individuals for Assistance

Individuals who are eligible for assistance vary by type of NEG project. The general categories of eligible individuals are:

1. A dislocated worker under WIA Section 101(9) is:

a. An individual who:

(1) Has been terminated or laid off, OR has received a notice of termination or layoff, from employment;

(2) Is eligible for or has exhausted entitlement to unemployment compensation, OR has been employed for a duration sufficient to demonstrate to appropriate staff of the One-Stop Center attachment to the workforce but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer not covered under the state's unemployment compensation law; AND

(3) Is unlikely to return to a previous industry or occupation.

b. An individual who:

(1) Has been terminated or laid off, OR has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility or enterprise; or

(2) Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; OR is employed at a facility at which the employer has made a general announcement that such facility will close.

Note: Eligibility for other than Core Services requires an announcement by the employer that the facility will close within 180 days, or an individual layoff notice.

c. An individual who was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters, as defined by a state.

d. An individual who has been providing unpaid services to family members in the home and who:

(1) Has been dependent on the income of another family member but is no longer supported by that income; AND

(2) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

2. A civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed, or that will undergo realignment, within the next 24 months. (WIA Section 173(c)(A)(ii))

3. An individual who is employed in a non-managerial position with a Department of Defense contractor, AND who is determined to be at risk of termination from employment as a result of reductions in defense expenditures, and whose employer is converting operations from defense to non-defense applications in order to prevent worker layoffs. (WIA Section 173(c)(A)(iii)

4. A member of the Armed Forces who:

a. Was on active duty or full-time National Guard duty;

b. Is involuntarily separated from active duty or full-time National Guard duty, OR is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program or voluntary separation incentive program;

c. Is not entitled to retired or retained pay incident to the separation described in (b); AND

d. Applies for employment and training assistance before the end of the 180-day period beginning on the date of separation. (WIA Section 173(c)(A)(iv))

5. For Disaster Projects, an individual who is temporarily or permanently laid off as a consequence of a disaster event qualifying for public assistance through a FEMA declaration. (WIA Section 173(d)(2))

6. For Disaster Projects, an individual who is long-term unemployed, as defined by the state. (WIA Section 173(d)(2))

7. For Trade-WIA Dual Enrollment Projects, an individual covered by a certification under the Trade Adjustment Assistance Reform Act of 2002 who also qualifies as an eligible dislocated worker under the Workforce Investment Act, and is co-enrolled/registered in both trade and WIA.

8. For Trade Health Insurance Coverage Assistance Projects (WIA Section 173(f) and (g):

a. An individual who is eligible for a trade readjustment allowance (TRA) under the TAA program, or would be eligible for TRA except that he/she has not yet exhausted his/her unemployment insurance (UI) benefits and qualified family members of the eligible individual;

b. Certain recipients of pension benefits through the Pension Benefit Guaranty Corporation; and

c. Recipients of wage subsidies in the Alternative Trade Adjustment Assistance Program.

Not all of these groups are eligible for each type of NEG project assistance. The following table summarizes the relationship between eligible individuals and eligible NEG project types.

	Regular	Disaster	Trade adjustment assistance	
			Dual enrollment	Health coverage & related
Dislocated Worker	X	X		
DoD/DoE Civilian Employee	X			
DoD Contractor Employee	X			
Member of Armed Forces	X			
Temporarily Laid off as Result of Disaster		X		
Long-term Unemployed		X		
Covered by a Trade Certification and Eligible for WIA			X	
Eligible for Trade Readjustment Assistance				X
Qualified Dependent of Eligible Trade-Impacted Worker				X
Certain PBGC Pension Recipient				X
ATAA Wage—subsidy Recipient				X

The number of affected workers cited in an application is limited to those individuals who meet one of the dislocated eligibility criteria at the time the application is submitted. NEG funds will not be provided for projected or anticipated layoffs. They must have been announced through WARN or other public announcement. As noted in Part VIII: Grant Modifications, grants may be modified to include subsequent layoffs that are within the scope of the approved grant award.

Part III: Administrative and Project Design Requirements

A. General

Grantee organizations, administrative entities, project operators and service providers are subject to the WIA law, regulations, grant application instructions, the terms and conditions of the grant and any subsequent modifications, and to all other applicable Federal laws (including provisions in Federal appropriations laws). Since eligible applicants are generally limited to states, Native American tribal entities and local boards that are established through WIA, NEG grantees will be subject to all administrative system requirements that apply to the use of WIA formula funds for dislocated workers, except as otherwise provided in these instructions or a grant award document.

B. Cost Limitations

Cost limitations for administrative and related project management expenditures (*e.g.*, monitoring, technical assistance) shall apply to all NEG grant awards. These limitations shall apply to actual expenditures at the end of the grant. In general, a limit of ten (10) percent of total costs excluding the costs of needs-related payments (and, as applicable, health insurance coverage payments) will apply to all NEG projects. The WIA definition of administrative costs shall be used in

determining compliance with the cost limit on all NEG grants.

On projects where services are being provided through one or more local area project operators, the ten percent cost limit will apply to project operator expenditures. In these projects the grantee may retain an additional amount to perform grant-level management and oversight functions. The amount to cover basic administrative functions such as record-keeping and reporting, procurement, audit, and general grant management activities should not exceed 1.5 percent of the total funding provided to project operators, excluding the costs of needs-related payments. This will not apply to the temporary employment component of Disaster projects.

Any costs associated with administering a system of needs-related or health insurance coverage payments must be separated identified in the application budget and justified in the narrative.

C. Indirect Costs

If an indirect cost rate is applied in calculating some of the costs at the grantee level, the applicant must include information from the most recent approval document that identifies the approved indirect cost rate and base, the cognizant approval agency, and the date of the approval. Indirect costs cited in the application should only be those that apply to the grantee. The grantee will be responsible for verifying the appropriate documentation to support any indirect rates that are applied in calculating costs at the project operator level. Indirect costs are a subset of total project costs; they may include administrative and program costs. Cost limitations apply to total project costs and are not applied separately to direct and indirect costs.

D. Early Intervention

For Regular and Dual Enrollment projects, all NEG applications are expected to be the result of an early intervention process that has been activated through the state's Rapid Response system. The early intervention process should include the use of formula funds to initiate services to eligible individuals. When formula funds have been used to provide services (excluding Rapid Response) to the eligible target group prior to grant award and the state is demonstrating an acceptable rate of expenditure of available formula funds (see Part III. K), the Grant Officer may authorize the use of NEG grant funds to reimburse the cost of such services.

However, pre-award costs will only be approved for appropriate expenses incurred from the date on which planned participants became eligible for services, and in no case will be approved for costs incurred before the date that is 120 calendar days prior to the date of receipt of the application by USDOL/ETA. Appropriate expenses for pre-award costs will be limited to the costs of direct costs for participants (core and intensive services, training and supportive services). Pre-award costs will not be approved for administrative or needs-related payment costs. Pre-award costs will not apply to Disaster or Trade Health Insurance Coverage projects.

For Regular projects, ETA expects that applications for NEG funding will be submitted within 120 calendar days (preferably sooner) of the date on which the target group of workers included in the application become eligible for assistance, or the dislocation event(s). In general, the initiation of early intervention activities will be a pre-condition for the award of NEG funds for Regular and Dual Enrollment projects. At a minimum, these activities should include contact with the affected workers and collection of information on the assistance needs of the workers.

If early intervention through Rapid Response has not been feasible, the applicant must document the circumstances that prevented initiation of early intervention in the application.

[**Note:** Applicants will be expected to actively pursue alternative methods of contact with workers and initiation of services in those cases where employer support and cooperation is limited or lacking.]

Applications for Disaster projects should be submitted within 30 calendar days of the occurrence of the disaster event. As discussed in Part VI of these guidelines, emergency applications (whether for a Regular or Disaster project) should be submitted within 15 calendar days of the FEMA declaration for public assistance eligibility.

E. Allowable Activities and Services

NEG funds may be used to provide services of the type described in Sections 134(d)(2), (3), (4) and (e)(2) and (3) of WIA, and pursuant to 20 CFR 671. Funds may not be used to pay for any costs of Core Services, as described in 134(d)(2), which have already been budgeted under available formula funds.

For Disaster projects, NEG funds may also be used for temporary disaster employment not to exceed six months (or 1,040 hours) for any single event; to help provide food, clothing, shelter and related humanitarian services; and to perform demolition, cleaning, repair, renovation and reconstruction of damaged and destroyed public structures, facilities and lands, located within the designated disaster area, as defined in the grant award document. A component may also be designed for employment-related assistance for participants who require help in returning to the workforce after completion of temporary employment.

For Trade Health Insurance Coverage Assistance projects, funds may be used for trade health insurance infrastructure and to pay health insurance premiums for certain trade-certified dislocated workers enrolled in a qualified health care plan as provided for in WIA Sections 173 (f) and (g). Additional guidance on the use of funds for these activities have been provided.

F. Project Design and Service Operations

1. Regular Projects

Policies regarding receipt of supportive services and needs-related payments will generally be consistent with the established policies and procedures of the local board(s) in the area in which the project is to operate as required in 20 CFR 671.140(c). ETA expects that such policies and procedures are flexible enough to respond to the needs of any eligible dislocated worker, including those who are eligible for assistance through NEG funding. For projects serving the same target population in more than two local areas, a policy may be developed based upon the combined policies of affected local areas as agreed to for an NEG project to ensure equitable services for a project's target population.

Where variations in program (core, intensive and/or training) policies (*e.g.*, training caps, duration of training, self-sufficiency requirements) may be appropriate to respond to the needs of special populations (*e.g.*, limited English speaking) who comprise the target group, these will have to be identified, explained and justified in the application narrative.

Projects that will operate on a consortium basis will be expected to establish a common set of service policies that will apply to the full project service area. Grantees and project operators will be expected to involve the applicable local board(s) of any approved variations in service policies that will apply to a NEG project.

2. Disaster Projects

The initial purpose of Disaster projects is temporary job creation to

provide clean-up, restoration and humanitarian assistance to communities that have been affected by a disaster event. Temporary disaster jobs are limited to public and private non-profit agencies. An individual participant on a Disaster project may be employed for a maximum of six months, or 1,040 hours, whichever is longer. The maximum level of wages paid to a participant is generally limited to $12,000, excluding the cost of fringe benefits. Fringe benefits should be paid in accordance with the policies of the employer of record for temporarily employed workers. The wage cap does not assume that the individual is employed for the full six months or 1,040 hours. A higher hourly wage may be paid, as appropriate, for higher skilled positions as long as the wage limit is not exceeded on an individual participant basis. If a higher wage level limit for some participants is critical to the success of project clean-up efforts and cannot be accommodated within the above provision, the applicant may request a higher limit for the applicable positions from the Grant Officer.

Priority in filling the temporary jobs should go to individuals who have been dislocated, either permanently or temporarily, as a result of the disaster event. Other eligible participants for disaster projects are dislocated workers as defined in WIA Section 101(9) and long-term unemployed individuals (as defined by the state) to fill jobs that are needed in the clean-up and recovery effort. Where permanently dislocated workers and long-term unemployed individuals are employed in temporary jobs on a Disaster project, and they need reemployment assistance to return to the workforce upon completion of the temporary jobs, the grantee may request to modify the grant to use awarded funds, or request additional funding, to provide appropriate intensive, training and supportive services, as provided for in the grant award document. The description of these services will be subject to all of the provisions that apply to a Regular project with the exception of the early intervention requirement and the company layoff data (see Part IV.B.2).

3. Dual Enrollment Projects

The primary purpose of Dual Enrollment projects is to provide funding for employment-related assistance for trade-certified dislocated workers. Such assistance may include career counseling, case management and supportive services not authorized under the Trade Act. Also, under certain circumstances, funding may be awarded to provide training, as specified in a grant award document. Trade-certified workers receiving assistance under a NEG must be dual enrolled in both the trade program and WIA, in accordance with the requirements of both programs.

G. Reasonableness of Costs

For Regular and Dual Enrollment projects, and the workforce investment employment-related component of Disaster projects, the planned per participant cost will be expected to be within a reasonable range of the actual end-of-year average cost per participant for formula-funded dislocated worker activities in the planned service area during the most recent completed Program Year, or the state average if the project is designed to cover multiple local areas. The actual formula program cost per participant should equal the total expenditures during the Program Year divided by the total number of registrants reported for the PY. This actual cost per participant level must be entered on the Project Synopsis form in the application. ETA will provide a benchmark level for ''reasonable range'' through separate policy guidance.

H. Integration with Other Resources

Regular and Dual Enrollment projects should be designed to make maximum use of assistance available through One-Stop partners, employers, and other local organizations. In addition, grantees will be expected to make a maximum effort to assist each project participant with applying and qualifying for available sources of financial assistance, consistent with the provisions of Section 663.320 of the WIA Regulations.

I. Coordination With Trade Act Funds

ETA expects that states will have in place efficient procedures for dual enrollment of eligible workers in both the TAA and WIA programs, as partners in the One-stop system. Receipt of NEG funds to provide services to TAA eligible workers will be predicated on the existence of such procedures. However, NEG funds cannot be used to provide assistance to any individual who is not eligible as a dislocated worker under the provisions of WIA. The exceptions are the special eligibility categories for individuals to receive assistance under Trade Health Insurance Coverage infrastructure and bridge NEG projects, as authorized in the Trade Adjustment Assistance Reform Act of 2002 and its amendments to WIA.

Further, the use of NEG funds for training and supportive services, including relocation assistance, will generally be subject to the limitations and requirements delineated in WIA and regulations, including approved training provider lists and the use of Individual Training Accounts, or as specified in the grant award document.

J. Performance Outcomes

As discretionary grant awards by the Secretary, NEG projects must be designed to achieve performance outcomes that support the performance goal commitments by the Secretary under the Government Performance and Results Act (GPRA). ETA will provide target performance levels for NEG projects through separate policy guidance. Beginning July 1, 2004, NEG projects will be subject to the common measures for employment and training programs. Participants in temporary disaster jobs are expected to receive necessary assistance to return to the workforce.

K. Use of Available Formula Funds

For Regular and Dual Enrollment projects, and the workforce investment employment-related services component of Disaster projects, applicants must demonstrate that they are maintaining an adequate rate of expenditure of funds provided to the state through formula allotments. This will include all dislocated worker program formula allotment funds, including those reserved by the state for Rapid Response and statewide activities. [**Note:** ETA has provided flexibility to states in transitioning funds between the dislocated worker program and the adult program under WIA. It is assumed that states and local boards applying for NEG funds will have utilized transfer authority appropriately.] The rate of expenditure standard will be communicated by ETA through separate policy guidance. This requirement will not apply to the temporary disaster employment component of a Disaster project or to a Trade Health Insurance Coverage Assistance project.

L. Project Management

ETA expects that NEG-funded projects will be organized to provide the most responsive services from the perspective of the customer (*i.e.*, the dislocated worker). There may be instances in which a project will operate in multiple local workforce areas covering the same company dislocation. The projects should be designed and managed to operate under a consistent set of service policies and procedures that are agreed to by all of the local boards involved.

On projects with multiple local project operators, ETA will award the grant to the state or to one of the local boards that has been designated as grant recipient through an agreement

executed by all of the local boards involved. The grant will be structured to operate on a full service area basis. The program policies and procedures applying to the project can be those of the state, of the local board designated as grant recipient, or ones jointly developed by all of the local boards as part of the agreement. This principle will also apply to projects that will operate on an interstate basis; that is, an agreement will have to be executed among all of the involved states or local boards and the agreement will need to designate one of the entities to be the grant recipient, as well as identify the service policies and procedures that will apply. Supportive service policies and needs-related payment policies for NEG projects will be consistent with 20 CFR 671.140(c); however, where more than one local area is providing assistance through a NEG for the same target population, project operators may propose to implement policies that combine or use the policies of one local area, to ensure equitable treatment for workers from the same layoff.

Where a project will operate in more than one local area, the grantee will have the authority to modify project operator agreements and move funds among designated project operators consistent with where eligible workers are seeking services. Where this action changes the scope of responsibility for individual project operators, the grantee should submit a revised Project Operator Data Form to USDOL/ETA. This action is for information purposes and will not constitute a formal grant modification request (see Part VIII of these guidelines for conditions requiring a grant modification). This authority is further limited to cases where a grant modification would not be required.

M. Veterans' Priority

National Emergency Grants are subject to the provisions of the ''Jobs for Veterans Act,'' Public Law 107–288, which provides priority of service to veterans and certain of their spouses in all Department of Labor-funded job training programs. To obtain priority of service, a veteran must meet the program's eligibility requirements, and for NEG projects must be a dislocated worker from the approved target population of a grant. Since NEG applications should be developed to assist all eligible individuals who are in need of assistance from the target population, this provision should not significantly change the planning and operation of NEG projects.

Part IV: Application Submission Requirements

To be considered for funding, an application must include the information identified in this section. The information requirements are organized by type of NEG project since the requirements vary by project type.

A. Regular Projects

1. Completed and signed *SF 424—Application for Federal Assistance.* This form is the required application for federal funds. Under the electronic system, the authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes the authorized signature.

2. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, type of eligible event, key contact information, planned number of participants, performance goals, and historical and planned cost per participant levels.

3. *Employer Data Form (ETA 9105).* This form provides employer and dislocation site-specific information needed to validate the eligibility of the dislocation event(s) and the target group of workers for NEG assistance. Information includes name and location of employer, date and type of worker notification, date(s) of layoff and number of workers affected, date(s) and types of Rapid Response activities, and number of planned participants.

4. *Project Operator Data Form (ETA 9107).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area) for each project operator. This form must be completed and submitted only to the degree that Project Operators have been identified at the time of application. This information should be submitted as Project Operators are identified and agreements executed. Except in disaster emergency situations, it is expected that Project Operators will have been identified at the time the application is submitted, and the contact information on the form should be completed.

5. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of enrollments in activities), and use of funds (*e.g.*, planned expenditures by type of program activity, administration).

Where approval of pre-award costs is being requested in the application, a separate column on the Planning Form should be used to identify the pre-award service costs.

6. *Narrative.* This section facilitates the applicant being able to provide any explanations/justifications needed for entries in the above forms. Narrative explanations are required in the following instances:

—A notification was made by the employer but no Rapid Response activities have been initiated.

—Some of the affected layoffs have occurred more than four months prior to the date of submission of the application, and additional information is required to document that workers are in need of and available for employment–related assistance.

—The application is being submitted to address ''community impact layoffs.'' The narrative must provide specific information in relation to the requirements for meeting this criterion (see the definition in Part II. A).

—The number of affected workers that will be enrolled as participants is a higher percentage than has been historically served through NEGs (*i.e.*, 50 percent).

—The planned average cost per participant on the project is outside a reasonable range of the actual average cost per participant for formula-funded dislocated worker activities, as appropriate, for the most recent completed Program Year.

—There are participants planned to receive NRPs, which requires explaining how the planned number of recipients and the NRP cost per participant were determined.

—Indirect costs are included in the application, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.

—Administrative costs related to NRPs are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).

—Administrative and/or Other costs are included, which requires a delineation of the components (*e.g.*, staffing, travel, facilities) and amounts of such costs. The applicant is free to include narrative explanations of other special factors, but the narrative should be concise and informative in relation to the application evaluation criteria.

7. *Funds Usage.* This information will not be required where the state in which the applicant is located expended a satisfactory level (see Part III.K) of the available formula funds in the most

recent completed Program Year and is on target to expend a satisfactory level of the available formula funds for the current Program Year, based on quarterly expenditure reports submitted to USDOL/ETA (*i.e.*, the ETA 9076 B and F).

Where this criterion cannot be met, the applicant will need to demonstrate through more complete and current financial information that it will expend a satisfactory level of available funds in the current Program Year by the end of the Program Year. This information should be included as an attachment to the grant submission. Information should present the financial status through the most recent month in the Program Year for which information is available and should include, at a minimum, total available funds, accrued expenditures to date, committed but unexpended funds in ITAs of currently enrolled participants, and the amount of the unexpended ITA funds that are expected to be expended by the end of the Program Year. This information should be presented separately for each local area that is included in the proposed service area for the project and for the funds reserved by the state for Rapid Response and statewide activities.

B. Disaster Projects

An initial application for a Disaster project should only address the temporary job creation component. Although workforce investment employment-related services may be provided to project participants who need them following employment in the clean-up, restoration and humanitarian assistance effort, the fully documented plan or a separate modification request to use NEG funds to provide these services will be required, as described in the grant award. This submission should occur at the point in time at which an adequate assessment of the need for workforce investment employment-related assistance has been completed (generally no more than 4–6 months after the initial grant award). Where this request includes approval for additional funding for the project, it will require a separate approval by the Secretary. The following identifies the submission requirements for each of these requests:

1. Initial Request: Temporary Disaster Jobs

a. Completed and signed *SF 424–Application for Federal Assistance.* This form is the required application for federal funds. Under the electronic system, the authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes the authorized signature. The requested funds on the form should apply only to the temporary job creation component of the project.

b. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, type of eligible event, key contact information, types of eligible individuals to be included in the target group for the project, planned number of participants, and contact information. This form includes an entry for the FEMA declaration that identifies the event as eligible for public assistance, which qualifies the event as eligible for NEG assistance. This may not be available at the time the application is submitted and, if not, will be entered by DOL/ETA. Entries will not be required for: Planned Cost per Participant, % of Planned Participants Receiving NRPs, Planned Entered Employment Rate, Actual Cost per Participant in Prior Program Year, and Planned Wage Replacement Rate.

c. *Project Operator Data Form (ETA 9105).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area) for each project operator. This form must be completed and submitted only to the degree that Project Operators have been identified at the time of application. This information should be submitted as Project Operators are identified and agreements executed.

Although most Disaster project applications will be submitted on an emergency basis, if an application is not submitted as an emergency request, it is expected that Project Operators will have been identified at the time of application, and the contact information on the form should be completed.

d. Planning Form (ETA 9103). This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of enrollments in activities), and use of funds (*e.g.*, planned expenditures by type of program activity, administration). For the temporary job creation component, the only allowable activities are ''Employed in Temporary Disaster Relief Assistance'' and ''Receiving Supportive Services.'' Allowable expenditure categories are ''Participant Wages,'' ''Participant Fringe Benefits,'' ''Supportive Services'' and ''Administration.''

e. *Narrative.* This section facilitates the applicant being able to provide any explanations/justifications needed for entries on the above forms. Narrative explanations will be required in the following instances:

—There are planned positions where the per participant wage exceeds the limits established in these guidelines.
—Indirect costs are included in the application, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.
—Administrative and/or Other costs are included, which requires a delineation of the components (*e.g.*, staffing, travel, facilities), and amounts of such costs.

The applicant is free to include narrative explanations of other special factors, but the narrative should be concise and informative in relation to the application evaluation criteria.

2. Modification or Additional Request: Workforce Investment Employment-Related Services for Disaster Project Participants

Where a significant number of permanently dislocated and/or long-term unemployed individuals have been temporarily employed in clean-up, restoration and humanitarian assistance activities, and there are not sufficient formula funds to provide needed assistance to transition them into permanent employment, the Department will consider a request to use approved but unneeded project funds, and/or a request for additional NEG funds, to provide reemployment assistance. It is expected that the grantee will make an assessment of this need sometime between the hiring of the individuals into the temporary jobs and the completion of the temporary employment. Thus, this request should generally be submitted four to six months following the grant award for the temporary job creation. The submission requirements are:

a. If additional approved funding is being requested, completed and signed *SF 424—Application for Federal Assistance.* Entries on this form should indicate a revision to an existing grant to increase the approved funding and project duration. The entry in ''Descriptive Title of Applicant's Project'' should include the grant number for the initial award. The requested funding amount should be for the additional request only.

b. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, type of eligible event, key contact information, types of eligible individuals to be included in the target group for the project, planned number of participants, performance goals,

historical and planned cost per participant levels for workforce investment employment—related services, and contact information.

c. *Project Operator Data Form (ETA 9105).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area(s)) for each project operator. Project operators should be known at the time this request is submitted.

d. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of enrollments in activities), and use of funds (*e.g.*, planned expenditures by type of program activity, administration). Entries on this form should apply only to the participants, activities and expenditures for this component (*i.e.*, should not include the information relating to the temporary job creation component, unless there is a need to modify previously submitted information for this component).

e. *Narrative.* This section facilitates the applicant being able to provide any explanations/justifications needed for entries on the above forms. Narrative explanations will be required in the following instances:

—The planned average cost per participant is outside a reasonable range of the actual average cost per participant for formula—funded dislocated worker activities in the planned service area for the most recent completed Program Year.

—Either the planned entered employment rate or the planned average wage replacement rate is less than the established NEG performance goals.

—There are participants going to receive NRPs, which requires explaining how the planned number of recipients and the NRP cost per participant were determined.

—Indirect costs are included in the application, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.

—Administrative costs related to NRPs are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).

—Administrative and/or Other costs are included, which requires a delineation of the components (*e.g.*, staffing, travel, facilities) and amounts of such costs.

The applicant is free to include narrative explanations of other special factors, but the narrative should be concise and informative in relation to the application evaluation criteria. This should include information on the status of other participants who may have worked in the temporary jobs, *e.g.*, returned to former employment, continued participation in the formula dislocated worker program, found other employment, etc.) It is expected that all disaster program participants will receive the assistance necessary, either through the formula program or through NEG assistance, to return to the unsubsidized workforce.

f. *Funds Usage.* This information will not be required where the state in which the applicant is located expended a satisfactory level (see Part III. J) of the available dislocated worker formula funds ''and if the target group includes long—term unemployed, available adult formula funds—in the most recent completed Program Year and is on target to expend a satisfactory level of the available formula funds for the current Program Year, based on quarterly expenditure reports submitted to USDOL/ETA (*i.e.*, the ETA 9076 B, E and F).

Where this criterion cannot be met, the applicant will need to demonstrate through more complete and current financial information that it will expend a satisfactory level of available funds in the current Program Year by the end of the Program Year. This information should be included as an attachment to its grant submission. Information should present the financial status through the most recent month in the Program Year for which information is available and should include, at a minimum, total available funds, accrued expenditures to date, committed but unexpended funds in ITAs of currently enrolled participants, and the amount of the unexpended ITA funds that are expected to be expended by the end of the Program Year. This information should be presented separately for each local area that is included in the proposed service area for the project and for the funds reserved by the state for Rapid Response and statewide activities.

C. Trade—WIA Dual Enrollment Projects

a. Completed and signed *SF 424—Application for Federal Assistance.* This form is the required application for federal funds. Under the electronic system, the authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes authorized signature.

b. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, key contact information, planned number of participants, and performance goals.

c. *Employer Data Form (ETA 9105).* This form provides employer and dislocation site-specific information needed to validate the eligibility of the dislocation event(s) and the target group of workers for NEG assistance. Information includes name and location of employer, date and type of worker notification, date(s) of layoff and number of workers affected, date(s) and types of Rapid Response activities, and number of planned participants.

d. *Project Operator Data Form (ETA 9107).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area) for each project operator. This form must be completed and submitted only to the degree that Project Operators have been identified at the time of application. This information should be submitted as Project Operators are identified and agreements executed. However, it is expected that Project Operators will have been identified at the time that the application is submitted and the contact information on the form should be completed.

e. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of enrollments in activities), and use of funds (*e.g.*, planned expenditures by type of program activity, administration). Where approval of pre-award costs is being requested in the application, a separate column on the Planning Form should be used to identify the pre-award service costs.

f. *Narrative.* This section facilitates the applicant being able to provide any explanations/justifications needed for entries on the above forms. Narrative explanations will be required in the following instances:

—No Rapid Response activities have been initiated.

—Some of the affected layoffs have occurred more than four months prior to the date of submission of the application, and additional information is required to document that workers are in need of and available for employment-related assistance.

—The number of affected workers that will be enrolled as participants is a higher percentage than has been historically served through NEGs (*i.e.*, 50 percent).

—The planned average cost per participant on the project is outside a reasonable range of the actual average cost per participant for formula-funded dislocated worker activities, as appropriate, for the most recent completed Program Year.
—Indirect costs are included in the application, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.
—Administrative and/or Other costs are included, which requires a delineation of the components (*e.g.*, staffing, travel, facilities) and amounts of such costs.

The applicant is free to include narrative explanations of other special factors, but the narrative should be concise and informative in relation to the application evaluation criteria.

f. *TAA Certification Report*. The applicant must include, as an attachment to its grant submission, information which identifies the trade certified petition number(s) for the workers included in the target group for the project. In cases where a petition has been filed but the certification is pending, identify the trade petition number and the date the petition was filed. This file must also include a description of the Rapid Response provided to each of the cited trade petition situations.

g. *Funds Usage*. This information will not be required where the state in which the applicant is located expended a satisfactory level (see Part III. J) of the available dislocated worker formula funds in the most recent completed Program Year and is on target to expend a satisfactory level of the available dislocated worker formula funds for the current Program Year, based on quarterly expenditure reports submitted to USDOL/ETA (*i.e.*, the ETA 9076 B and F).

Where this criterion cannot be met, the applicant will need to demonstrate through more complete and current financial information that it will expend a satisfactory level of available funds in the current Program Year by the end of the Program Year. This information should be included as an attachment to its grant submission, and include, at a minimum, the current status (*i.e.*, through the most recent month in the Program Year for which information is available) of available funds for the Program Year, accrued expenditures to date, committed but unexpended funds in ITAs of currently enrolled participants, and the amount of the unexpended ITA funds that are expected to be expended by the end of the Program Year. This information should be presented separately for each local area that is included in the proposed service area for the project and for the funds reserved by the state for Rapid Response and statewide activities.

D. Trade Adjustment Assistance Projects (WIA Section 173(f) and (g): Health Insurance and Related Assistance

These projects are limited to assistance to eligible individuals as identified in the Trade Adjustment Assistance Reform Act of 2002. These NEG funds are primarily:
—To pay for 65 percent of the advance costs of health insurance premiums for eligible individuals in a ''bridge'' program in coordination with the Internal Revenue Service's Health Coverage Tax Credit (HCTC) program, as provided for in Section 173(g) of the Workforce Investment Act, as amended by the Trade Adjustment Assistance Reform Act of 2002.
—To pay for health insurance infrastructure as needed by states to implement the system. Instructions for applying for NEG funds to pay the costs of allowable system-building activities under Section 173(f) have been separately issued in Training and Employment Guidance Letter (TEGL) 10–02; instructions for the bridge program have been issued in TEGL 20–02, and further guidance is pending.

a. Completed and signed *SF 424-Application for Federal Assistance*. This form is the required application for federal funds. The authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes the authorized signature.

b. *Project Synopsis form (ETA 9106)*. This form summarizes key aspects of the proposed project such as project type, planned number of participants, and contact information. It also includes identification of the types of health insurance coverage options that will be available to project participants.

c. *Planning Form (ETA 9103)*. This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of enrollments in activities), and use of funds (*e.g.*, planned expenditures by type of program activity, administration).

d. *Narrative Summary*. Describe steps taken to consult and coordinate with appropriate state executive agencies and other appropriate parties in order to ensure that the use of NEG funds to provide health coverage assistance to eligible individuals will be consistent with the policies and procedures of those agencies. A narrative explanation must also be provided in cases where one or more of the following are reflected in the project plan:
—Indirect costs are included in the budget, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.
—Administrative costs related to processing payments for qualified health insurance coverage are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).
—Administrative and/or Other costs are included, which requires a delineation of the components (*e.g.*, staffing, travel, facilities) and, amounts of such costs.

The applicant is free to include narrative explanations of other special factors, but the narrative should be concise and informative in relation to the application evaluation criteria.

e. *TAA Certification Report*. The applicant must include, as an attachment to its grant submission, information which identifies the trade certification number(s) for the workers included in the target group for the project. In cases where a petition has been filed but the certification is pending, identify the trade petition number and the date the petition was filed.

Part V: Application Review Process

To be considered for funding, an application must demonstrate that the proposed project meets the purpose of and is consistent with the Act and Regulations and provides all of the information required by these guidelines. Applications that are not completely in accordance with the requirements or do not contain all required submission forms will not be considered as submitted and will not be evaluated for funding until all required information and documentation is provided. Complete applications will be evaluated for responsiveness to the criteria identified in this part. Just as with the submission requirements, the criteria are generally similar for each type of NEG project but there are variations. The specific criteria by type of project are itemized in the following sections.

A. Regular Projects

1. *Eligibility:* To ensure that NEG funds are only awarded to eligible

dislocation events and where there is a verifiable target group that is both eligible and in need of assistance:

a. Information demonstrates that the dislocation events cited are eligible for NEG funding.

b. Information demonstrates that identified workers in the target group are currently eligible for assistance.

c. Information indicates that the affected workers are still in need of assistance.

2. *Early Intervention:* To ensure that required Rapid Response is being implemented:

a. Information indicates that timely and appropriate Rapid Response actions have been taken.

b. Information indicates that some effort has been made to contact affected workers and/or their representatives.

3. *Reasonableness of Proposed Services and Costs:* To ensure that NEG projects are designed and operated in accordance with the federal requirements and the state and local policies that apply to formula-funded dislocated worker programs in the proposed project area, OR, if different, that they are fully justified in terms of target group and reemployment barriers, as discussed earlier:

a. The planned average cost per participant for the project is within a reasonable range of the actual cost per participant reported for the prior Program Year.

b. The percentage of planned participants receiving needs-related payments (NRPs) in the project and the NRP cost per participant are justified in terms of formula program experience, or UI level for the target group proposed in NEG application.

c. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; and (3) the date of the approval.

d. The ratio of planned participants to affected workers is reasonable in light of prior experience with NEG projects and with the results of Rapid Response/early intervention activities.

e. Total administrative and project management costs are within the cost limitations at both the state and local project levels.

4. *Timeliness of Assistance:* To ensure that project implementation will reflect timely assistance to affected workers, consistent with the initiation of Rapid Response and other early intervention activities; and to ensure that the rate of expenditures is consistent with rate of on-board participants by service type (*e.g.*, core/intensive, training):

a. All planned participants are enrolled in the project within 180 days of grant award, *i.e.*, the implementation schedule shows all enrollments by the end of the first six months of project operation or an explanation as to why this is not feasible.

b. All planned enrollments in training occur such that training can be completed within the project performance period.

c. Cumulative rates of expenditures quarter-to-quarter are reasonable given the cumulative level of enrollments for those: receiving intensive services, enrolled in training, receiving supportive services, and/or receiving needs-related payments, as applicable.

5. *Adequacy of Planned Performance:* To verify that planned performance for NEG projects is appropriate identify that the:

a. The planned levels of performance on each applicable performance measure are consistent with the established NEG performance goals; OR

b. The application includes specific employment barriers-related information on the project's target group to justify a lower level of performance.

6. *Need for Funds:* To ensure that other funds are not available and/or have not been committed to help meet the needs of the workers covered in the application.

a. Available information indicates that the state, or applicant, is maintaining an acceptable rate of expenditure of available WIA and Wagner-Peyser formula funds.

B. Disaster Projects

[The following criteria will apply to the initial request for funds for temporary disaster jobs to provide clean up, restoration and humanitarian assistance. A modification to provide workforce investment employment-related services to project participants will be evaluated by the same criteria used for Regular projects, except for the early intervention requirement.]

1. *Eligibility*. To ensure that NEG funds are only awarded to eligible dislocation events and where there is a verifiable target group that is both eligible and in need of assistance:

a. FEMA has issued a public declaration that the event is eligible for public assistance.

2. *Reasonableness of Proposed Services and Costs*. To ensure that NEG projects are designed and operated in accordance with the federal requirements and policies:

a. Information in the application is consistent with the statutory employment duration limitations and expected wage limit on temporary employment activities.

b. The indirect costs are justified by identification of: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

c. Total administrative costs are within the cost limitation.

3. *Timeliness of Assistance*. To ensure that project implementation will reflect timely response to the emergency situation:

a. All planned temporary jobs are filled within the first three quarters of project operation.

C. Trade—WIA Dual Enrollment Projects

1. *Eligibility*. To ensure that NEG funds are only awarded to eligible dislocation events and where there is a verifiable target group that is both eligible and in need of assistance:

a. Trade certifications and/or other appropriate documentation to demonstrate eligibility is provided in the application or can be accessed from other sources in DOL/ETA.

2. *Early Intervention*. To ensure that required Rapid Response is being implemented:

a. Information indicates that timely and appropriate Rapid Response actions have been taken.

b. Information indicates that some effort has been made to contact affected workers and/or their representatives.

3. *Reasonableness of Proposed Services and Costs*. To ensure that NEG projects are designed and operated in accordance with the applicable federal requirements and the state and local policies in the proposed project area(s):

a. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

b. Total administrative costs are within the cost limitation.

4. *Adequacy of Planned Performance:* To verify that planned performance on NEG projects appropriate.

a. The planned levels of performance on each applicable performance measure consistent with the established NEG performance goals; OR

b. The application includes specific employment barriers-related information on the project's target group to justify a lower level of performance.

5. *Timeliness of Assistance:* To ensure that project implementation will reflect timely assistance to affected workers, and ensure that the rate of expenditures is consistent with rate of on-board participants by service type (*e.g.*, core/intensive, training).

a. All planned participants are enrolled in the project within 180 days of grant award.

b. All planned enrollments in training (as authorized by grant award) occur such that training can be completed within the project performance period.

c. Cumulative rates of expenditures quarter-to-quarter are reasonable given the cumulative level of enrollments for each of: receiving intensive services, enrolled in training, and receiving supportive services.

6. *Need for Funds*. To ensure that other funds are not available and/or have not been committed to meet the needs of the workers covered in the application:

a. No other funding has been committed to provide the same services to the same target group.

b. Available information indicates that the state is maintaining an acceptable rate of expenditure of available formula and trade training funds.

D. Trade Health Insurance Coverage and Related Assistance Projects

1. *Eligibility*. To ensure that NEG funds are only awarded to provide health coverage assistance and supportive services to eligible trade-impacted workers and other eligible individuals, as specified in the Trade Adjustment Assistance Reform Act of 2002:

a. Trade certifications and/or other appropriate documentation to demonstrate eligibility is either provided in the application or can be accessed from other sources in DOL/ETA.

2. *Reasonableness of Proposed Services and Costs*. To ensure that NEG funds are utilized in a manner consistent with the federal requirements and the state and local policies that apply to trade assistance programs in the proposed project area:

a. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; and (3) the date of the approval.

b. Total administrative costs, exclusive of health coverage payment processing costs, are within the cost limitation.

c. The basis for administrative costs to process health coverage payments is justified.

Part VI: Funding Approaches

Applications for NEG funds can be funded in whole or in part. Applicants should assume that all NEGs will be funded incrementally. In addition, applicants may submit a request for NEG funding on an emergency basis. The conditions associated with each of these are described in the following sections.

A. Emergency Funding

Any event that qualifies for a Disaster project can be considered an emergency, if submitted within 15 days of FEMA public assistance declaration. A dislocation where no advance notification of layoff was provided to workers can also be considered an emergency. In emergency situations, the applicant may submit a streamlined application. An emergency application must be submitted within 15 calendar days of the emergency, unless logistical barriers (*e.g.*, damaged communication systems resulting from a disaster event) prevent submission within this timeframe.

The following minimum submission requirements shall apply to an emergency funding request:

For Regular Projects:

—SF 424
—Project Synopsis Form (ETA 9106) (entries are not required for Planned Cost per
—Participant, Planned Entered Employment Rate, Planned Wage Replacement Rate and Project Operator Listing)
—Employer Data Form (ETA 9105)

For Disaster Projects:

—SF 424
—Project Synopsis Form (ETA 9106) (entries are not required for Planned Cost per Participant, Planned Entered Employment Rate, Planned Wage Replacement Rate and Project Operator Listing)

Where an emergency application is approved for funding, the applicant must submit a full application (*i.e.*, consistent with the specifications in Part IV) within 60 calendar days of the date of the grant award. The SF 424 included in the full application submission should indicate a revision to an existing grant. Generally, no more than one-third of maximum approved funds will be released as a result of emergency applications.

B. Incremental Funding

As noted previously, applicants should expect that all NEG awards will be funded incrementally. In these cases, a maximum funding level will be approved by the Secretary, but a lesser amount will be initially awarded. The grantee will be required to submit, at a later date, a request(s) for the balance of needed funds, as supported by enrollments and expenditures. The maximum approved ''up to'' amount is not a commitment on the part of the Department to release the full amount when such funds are not documented as needed.

Requirements for additional funding increments will be specified in the grant award letter. For most projects, receipt of additional approved funding will be based on achieving a level of project implementation where a justifiable projection of additional funds needed to complete the project can be developed. This will generally occur when all planned participants have been enrolled and assessed, training and supportive service obligations are known, all proposed project staff are on-board, and there is 2–3 months of actual operating expenditure information. The follow-up increment(s) will be awarded based on submission of a request to release approved but not yet awarded funds by the grantee, and enrollments and expenditures support the need for release of additional funds.

The number of funding increments will be determined by the ability to develop a confident projection of full funding needs, whether there have been prior performance issues with the grantee or the project operator(s), or where the grantee and/or project operators do not have previous experience with NEGs or with projects of the size or complexity of the one proposed in the application. Prior performance issues can include: Participant and/or expenditure levels, performance outcomes, and compliance problems in project implementation. Resolution of applicable compliance or technical assistance issues will be a condition of the grant award and a pre-condition for receipt of additional funding increments.

Part VII: Post-Grant Award Requirements

A. Follow-up Planning Requirements

Each grantee will be required to develop a Project Operating Plan to reflect the approved project design and funding parameters in the grant award. The Project Operating Plan must be completed within 90 calendar days following grant award and be transmitted to the Regional Office upon completion. In cases of emergency grant awards, the Project Operating Plan will be due 60 calendar days following approval of the full application.

The Operating Plan must include the following elements:

1. Regular Projects

—Updated information since submission of the application that is not required in a grant modification:
—The layoff schedules (*i.e.*, dates and number of affected workers) for all approved target group employers.

—Status and results of all required Rapid Response activities, as applicable.

Copies of signed agreements with each proposed Project Operator, including:

—A completed planning form (ETA 9103).

—A line item budget specifying costs for staff salaries and fringe benefits, staffs travel, facilities and communications, supplies, equipment, assessment and instructional materials, training, supportive services, indirect costs, Needs-related Payments, and administration of NRPs. Costs must be delineated between administrative and program costs.

—A staffing plan that describes proposed staffing by job title, full-time equivalent staff to be assigned, salary, and benefits rates for each staff position.

—Listing of all sites and organizations that will provide services to participants, including a description of service coordination arrangements with One-Stop Center operators and partners.

—Summary profile of the reemployment barriers that have been identified among the target group of participants and description of the implications of the profile on the project service design.

—Description of the job placement strategy for the project, including services to be provided to both participants and employers.

—Copy of local area service policies ‘‘ specifically training, supportive services and NRPs—that will be used on the project, as authorized to be modified by the grant award.

—Description of the role to be played by the local Workforce Investment Board(s) in management and oversight of the project.

—Description of the monitoring responsibilities and procedures that will be followed by the grantee.

If the grantee has requested administrative and project management funds in excess of the cost limitation,

—A workplan, line item budget and staffing for the activities to be undertaken.

2. Disaster Projects (Temporary Employment Component)

—Description of the coordination between FEMA (and other agencies, such as HUD and HHS) and the project including what services each entity is contributing towards the recovery needs of the affected area.

—Updated information on all community planning activities completed to date.

—Status of participant recruitment activities.

—Copies of signed agreements with each proposed Project Operator, including:

—A completed planning form (ETA 9103).

—A line item budget specifying costs for staff salaries and fringe benefits, staffs travel, supportive services, indirect, needs-related payments, and administration of NRPs. Costs must be delineated between administrative and program costs.

—A staffing plan that describes proposed staffing by job title, full—time equivalent staff to be assigned, salary, and benefits rates for each staff position.

—Worksite Plans detailing all planned worksites, by county, and including:

—Specific jobs to be performed and wage levels for each;

—Number of supervisors/crew leaders and ratio of supervisors/crew leaders to workers;

—Employer of record for the workers;

—Description of worksite training provided to workers;

—Identification of special equipment required to perform work and source of funding for the equipment;

—Description of the responsibilities for paying wages and the controls for ensuring participant time limits are complied with;

—Description of policies governing supportive services to participants; and

—Description of the monitoring responsibilities and procedures that will be followed by the grantee.

3. Trade-WIA Dual Enrollment Projects

—Updated information since submission of the application that is not required in a grant modification:

—The layoff schedules (*i.e.*, dates and number of affected workers) for all approved target group employers.

—Status and results of all required Rapid Response activities, as applicable.

—Description of policies governing:

—Training services (if applicable), and

—Supportive services, including relocation assistance.

—Description of responsibilities and procedures for:

—Participant assessment,

—Participant employment planning, and

—Participant case management.

Where different state organization entities are responsible for administering the TAA and WIA programs:

—A description of the procedures that are being used to co-enroll and integrate funding sources into a single plan of assistance to project participants.

—Copies of signed agreements with each proposed Project Operator, including:

—A completed planning form (ETA 9103).

—A line item budget specifying costs for staff salaries and fringe benefits, staff travel, facilities and communications, supplies, equipment, assessment and instructional materials, training, supportive services, indirect, needs-related payments, and administration of NRPs. Costs must be delineated between administrative and program costs.

—A staffing plan that describes proposed staffing by job title, full-time equivalent staff to be assigned, salary, and benefits rates for each staff position.

—Listing of all sites and organizations that will provide services to participants, including a description of service coordination arrangements with One-stop Center operators and partners.

—Summary profile of the reemployment barriers that have been identified among the target group of participants and description of the implications of the profile on the project service design.

—Description of the job placement strategy for the project, including services to be provided to both participants and employers.

—Description of the monitoring responsibilities and procedures that will be followed by the grantee.

If the grantee has requested administrative funds in excess of the cost limitation:

—A workplan, line item budget and staffing for the administrative activities to be undertaken.

For each NEG, the Operating Plan will be one source of information to be reviewed by ETA staff in determining future funding needs for the project. The existence and completeness of the Operating Plan will be a pre-condition for the release of additional funding increments.

B. Project Oversight

In addition to the review of the Project Operating Plan, each project will be reviewed on-site at least once by ETA staff. The purpose of this review will be to verify core compliance factors such as participant eligibility and adequate financial management, assess the effectiveness of participant service policies and processes in achieving project performance goals, and evaluate

the need for funds to complete the project. This review will occur between six months following the date of grant award and the project midpoint. This review will include the operations of both the grantee and the project operators. Where multiple project operators are involved, the grantee will be expected to participate in the review of operations at the project operator level.

For Disaster projects, on-site reviews will generally occur within six months of the grant award.

C. Project Performance Reporting

Each grant recipient will be required to submit electronically to the Grant Officer a Quarterly Report Form (ETA 9104) on actual performance to date. The report will include the same factors as the Cumulative Quarterly Planning Form (ETA 9103) in the grant document. A copy of this form is included in Appendix A. This report is due within 45 calendar days following the end of each Program Year quarter.

Part VIII: Grant Modifications

Grant modifications will be required in the following circumstances:

a. To include additional layoffs that are within the scope of the approved grant award;

b. To change the project performance period;

c. To add or change project operators;

d. Change contact individuals or information for the grantee or any project operator;

e. To change any of the project design parameters that results in an increase of more than 10 percent in the approved cost per participant;

f. To change the approved indirect cost rate;

g. To increase the amount of approved funding for supportive services, Needs-Related Payments and/or administration of Needs-Related Payments;

h. To lower the end-of-project performance goals.

i. To request an additional funding increment within the total funding approved by the Secretary

Requests under a, b, c or d that do not require a change in the amount of the approved grant award can be approved by the Regional Office. All other modifications requests will require the approval of the Grant Officer.

Grantees may request a modification to add new employers or layoffs in local areas that are not included in the approved grant award only if the modification is submitted within the same Program Year in which the grant award was made.

The content of the modification request will be determined by the nature of the requested change. As appropriate, revisions to applicable grant application forms and narrative will be submitted. Applicants will be notified of approval or non-approval of a complete request within 30 days of receipt by ETA.

In general, where there is a need to increase the amount of funding approved by the Secretary for a project, a new application for NEG funds must be submitted. These submission requirements have been identified in Part IV. B. There are limited cases where the need for additional funding can be accommodated through a modification to a funded project. These cases are:

—Adding the workforce investment employment-related services component to a Disaster project;

—Increasing the number of participants and/or costs (*i.e.*, based on documented service needs) for the approved target group in the grant award based on project implementation;

—Adding to the approved target group additional eligible workers at the employer sites identified in the approved grant award.

Additions to the approved target group will be limited to employer sites identified in the approved grant and to workers who become eligible for assistance within 90 calendar days following the grant award.

In the above cases, all workers must be eligible and be able to be enrolled in the project within 180 days following grant award and will be expected to complete services within the approved project performance period, or as modified.

Any request for additional funding for a current project will require an approval decision by the Secretary.

BILLING CODE 4510–30–P

Appendix A—Application and Reporting Forms

Standard Form (SF) 424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: *Application*	*Pre-application*	3. DATE RECEIVED BY STATE	State Application Identifier
[ ] Construction [ ] Non-Construction	[ ] Construction [ ] Non-Construction	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)
6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT (*enter appropriate letter in box*) [ ] A. State H. Independent School District B. County I. State Controlled Institution of Higher Learning
8. TYPE OF APPLICATION: [ ] New [ ] Continuation [ ] Revision If revision, enter appropriate letter(s) in box(es): [ ] [ ] A. Increase Award B. Decrease Award [ ] Increase Duration D. Decrease Duration Other (*specify*):	C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Inter-municipal M. Profit Organization G. Special District N. Other (Specify)
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:	9. NAME OF FEDERAL AGENCY: 11. DESCRIPTIVE TITLE OF APPLICANT 'S PROJECT:
12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*)	

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project Statewide

15. ESTIMATED FUNDING:	
a. Federal	0.00
b. Applicant	0.00
c. State	0.00
d. Local	0.00
e. Other	0.00
f. Program Income	0.00
g. TOTAL	0.00

16. 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
[ ] OR PROGRAM HAS NOT BEEN SELECTED FOR STATE REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
[ ] Yes If "Yes," attach an explanation [ ] No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

Editions Not UsableStandard Form 424 (REV 4-88)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

B.

Project Synopsis Form

OMB Approval No. 1205-0439
Expiration date: 01/31/07

State of ___	Amount of Funding Request $_____	Amount Approved by DOL $_____
Project Name:		
Project Type: __Regular __Disaster __.Trade Dual Enrollment __ Trade Health Insurance Coverage		
Application Type: __Full __ Emergency (If Emergency, reason:_____)		
For Regular Project ONLY, type of Eligible Dislocation Event: __Plant Closure/Mass Layoff __Community Impact Layoffs __ Military Installation __ Industry wide □□□ NAIC Code		
For Disaster Project Application ONLY: Name/Description of Disaster Event: _____ Date of FEMA Declaration of Eligibility for Public Assistance: _____ Target Groups (check all that apply): __Unemployed due to Disaster __Long-Term Unemployed __Dislocated Workers		
For Trade Health Insurance Coverage Project Application ONLY: State-based Qualified Health Insurance Coverage Programs Selected by State __Continuation Provision __High-Risk Pool __State Employees __State Employee-Comparable __Joint State-Private Non-pool __Joint State-Private Pool __Non-federally Financed		
Applicant Contact Person:		
Street Address 1:		
Street Address 2:		
City: _____ State: _____ Zip Code: _____		
Telephone:		
FAX:		
Email:		
Planned Number of Participants: _____	Planned Entered Employment Rate: ____%	
Planned Cost per Participant: $_____	Actual Cost per Participant in Prior PY: $_____	
% of Planned Participants Receiving NRPs: ____%	Planned Wage Replacement Rate: ____%	
Counties included in Project Service Area:		
Project Operator Listing:		

ETA 9106 (January 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

C.

OMB Approval No. 1205-0439
Expiration date: 01/31/07

Employer Data Form

Company/Industry	Location of Facility	Notification Issued?	Date of Notification	Layoff Date(s)	Number of Affected Workers
		__WARN __Public Announcement by Employer __Other(specify) __None			__ Check if Closure

Date(s) of Rapid Response Actions	# of Workers Contacted	TAA Petition	Number of Planned Participants	Labor Organization Representation
Contact with Employer: _____ Contact with Workers: _____ __None		Date Filed: _____ __Number of Workers Covered __Not applicable		

Type of Business	Three-Digit NAIC Code

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

D.

OMB Approval No. 1205-0439
Expiration date: 01/31/07

Project Operator Data Form

Project Operator:
Street Address 1:
Street Address 2:
City: _____ State: _____ Zip Code: _____
Contact Person:
Telephone:
FAX:
Email:
Duration of Project Operator Agreement: Start _____ End _____
Funding Level: $ _____
Number of Participants: _____
Counties included in Project Operator Service Area: _____

ETA 9107
(February 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

E. PLANNING FORM* 1- Regular Projects

OMB Approval No. 1205-0439
Expiration Date: 01/31/07

All quarterly entries are CUMULATIVE over all previous quarters

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER													
	Admin	Program	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8	Qtr 9	Qtr 10	Qtr 11	Qtr 12
Implementation Schedule														
TOTAL PLANNED PARTICIPANTS														
RECEIVING INTENSIVE SERVICES														
ENROLLED IN TRAINING														
RECEIVING SUPPORTIVE SERVICES														
RECEIVING NEEDS RELATED PAYMENTS														
EXITS														
ENTERING EMPLOYMENT AT EXIT														
Total Expenditures: GRANTEE LEVEL														
SUPPORTIVE SERVICES														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN EXCLUDING NRP PROCESSING*														
• NRP PROCESSING														
• OTHER *														
INDIRECT														
OTHER*														
Total Expenditures: PROJECT OPERATOR LEVEL														
CORE AND INTENSIVE SERVICES														
TRAINING														
SUPPORTIVE SERVICES														
NRPS														
OTHER*														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN EXCLUDING NRP PROCESSING*														
• NRP PROCESSING														
• OTHER *														
TOTAL EXPENDITURES: GRANTEE AND PROJECT OPERATOR LEVEL														

*This form must be accompanied by an appropriate budget narrative which lists, for each *ed line item, components of the costs, e.g. staff salaries, fringe benefits, equipment, travel, facilities, and the estimated cost amounts for each.

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

E. PLANNING FORM* 2 – Disaster Projects ☒ **Temporary Job Creation**

OMB Approval No. 1205-0439
Expiration Date: 1/31/07

All quarterly entries are CUMULATIVE over all previous quarters

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER													
	Admin	Program	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8	Qtr 9	Qtr 10	Qtr 11	Qtr 12
Implementation Schedule														
TOTAL PLANNED PARTICIPANTS														
EMPLOYED IN TEMP DISASTER RELIEF ASST.														
RECEIVING INTENSIVE SERVICES														
RECEIVING SUPPORTIVE SERVICES														
EXITS														
ENTERING EMPLOYMENT AT EXIT														
Total Expenditures: GRANTEE LEVEL														
SUPPORTIVE SERVICES														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN														
• OTHER *														
INDIRECT														
OTHER*														
Total Expenditures: PROJECT OPERATOR LEVEL														
PARTICIPANT WAGES														
PARTICIPANT FBS														
CORE AND INTENSIVE SERVICES														
SUPPORTIVE SERVICES														
OTHER*														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN														
• OTHER *														
TOTAL EXPENDITURES: GRANTEE AND PROJECT OPERATOR LEVEL														

*This form must be accompanied by an appropriate budget narrative which lists, for each *ed line item, components of the costs, e.g. staff salaries, fringe benefits, equipment, travel, facilities, and the estimated cost amounts for each.

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

E. PLANNING FORM* 2 – Disaster Projects ☒ **Workforce Development Services**

OMB Approval No. 1205-0439
Expiration Date: 01/31/07

All quarterly entries are CUMULATIVE over all previous quarters

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER													
	Admin	Program	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qt 6	Qtr 7	Qtr 8	Qtr 9	Qtr 10	Qtr 11	Qtr 12
Implementation Schedule														
TOTAL PLANNED PARTICIPANTS														
RECEIVING INTENSIVE SERVICES														
ENROLLED IN TRAINING														
RECEIVING SUPPORTIVE SERVICES														
RECEIVING NEEDS-RELATED PAYMENTS														
EXITS														
ENTERING EMPLOYMENT AT EXIT														
Total Expenditures: GRANTEE LEVEL														
SUPPORTIVE SERVICES														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN EXCLUDING NRP PROCESSING*														
• NRP PROCESSING														
• OTHER *														
INDIRECT														
OTHER*														
Total Expenditures: PROJECT OPERATOR LEVEL														
CORE AND INTENSIVE SERVICES														
TRAINING SERVICES														
SUPPORTIVE SERVICES														
NRPS														
OTHER*														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN EXCLUDING NRP PROCESSING*														
• NRP PROCESSING														
• OTHER *														
TOTAL EXPENDITURES: GRANTEE AND PROJECT OPERATOR LEVEL														

*This form must be accompanied by an appropriate budget narrative which lists, for each *ed line item, components of the costs, e.g. staff salaries, fringe benefits, equipment, travel, facilities, and the estimated cost amounts for each.

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

E. PLANNING FORM* 3 – Trade-WIA Dual Enrollment

OMB Approval No. 1205-0439

All quarterly entries are CUMULATIVE over all previous quarters

Expiration Date: 01/31/07

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER													
	Admin	Program	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8	Qtr 9	Qtr 10	Qtr 11	Qtr 12
Implementation Schedule														
TOTAL PLANNED PARTICIPANTS														
RECEIVING INTENSIVE SERVICES														
ENROLLED IN TRAINING (NEG-FUNDED ONLY)														
RECEIVING SUPPORTIVE SERVICES (NEG-FUNDED ONLY)														
EXITS														
ENTERING EMPLOYMENT AT EXIT														
Total Expenditures: GRANTEE LEVEL														
SUPPORTIVE SERVICES														
PROGRAM MANAGEMENT AND OVERSIGHT														
ADMIN EXCLUDING NRP PROCESSING*														
NRP PROCESSING														
• OTHER *														
INDIRECT														
OTHER*														
Total Expenditures: PROJECT OPERATOR LEVEL														
CORE AND INTENSIVE SERVICES														
TRAINING (NEG-FUNDED ONLY)														
SUPPORTIVE SERVICES (NEG-FUNDED ONLY)														
OTHER*														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN EXCLUDING NRP PROCESSING*														
• NRP PROCESSING														
• OTHER *														
TOTAL EXPENDITURES: GRANTEE AND PROJECT OPERATOR LEVEL														

*This form must be accompanied by an appropriate budget narrative which lists, for each *ed line item, components of the costs, e.g. staff salaries, fringe benefits, equipment, travel, facilities, and the estimated cost amounts for each.

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

E. PLANNING FORM* 4 – Trade Health Insurance Coverage Assistance

All quarterly entries are CUMULATIVE over all previous quarters

OMB Approval No. 1205-0439
Expiration Date: 01/31/07

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER													
	Admin	Program	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8	Qtr 9	Qtr 10	Qtr 11	Qtr 12
Implementation Schedule														
TOTAL PLANNED PARTICIPANTS														
RECEIVING SUPPORTIVE SERVICES														
RECEIVING HEALTH COVERAGE PAYMENTS														
Total Expenditures														
SUPPORTIVE SERVICES														
HEALTH COVERAGE PAYMENTS														
PROGRAM MANAGEMENT AND OVERSIGHT														
• ADMIN., EXCLUDING PREMIUM PAYMENT PROCESSING*														
• PREMIUM PAYMENT PROCESSING														
• OTHER *														
INDIRECT														
OTHER*														

*This form must be accompanied by an appropriate budget narrative which lists, for each *ed line item, components of the costs, e.g. staff salaries, fringe benefits, equipment, travel, facilities, and the estimated cost amounts for each.

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 15 minutes. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210. (Paperwork Reduction Project 1205-0439).

F.

OMB Approval No. 05-0439 Expiration date: 01/31/07

Quarterly Report Form

Grantee:
Grant Number:
Project Number:
Performance Period Covered by this Report: _____ through _____

PERFORMANCE FACTOR	REGULAR	DISASTER	DUAL ENROLLMENT	TRADE ACT HEALTH INSURANCE
TOTAL PARTICIPANTS				
Receiving Intensive Services				
Enrolled in NEG -funded Training				
Receiving NEG-funded Supportive Services				
Receiving Needs-Related Payments				
Employed in Temp. Disaster Relief Asst.				
Receiving Health Coverage Payments				
Exits				
Entering Employment at Exit				
TOTAL EXPENDITURES: GRANTEE LEVEL				
NRPs				
Supportive Services				
Health coverage Payments				
Program Management and Oversight				
- Administration, excl. NRP/Premium Payment Processing				
- NRP Processing				
- Premium Payment Processing				
- Other				
Indirect				
Health Coverage Payment Admin.				
Other				
TOTAL EXPENDITURES: PROJECT OPERATOR LEVEL				
Participant Wages				
Participant FBs				
Core and Intensive Services				
NEG-funded Training				
NEG-funded Supportive Services				
NRPs				
Program Management and Oversight				
- Administration, excl. NRP Processing				
- Other				
Other				
TOTAL EXPENDITURES: GRANTEE AND PROJECT OPERATOR				

ETA 9104

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Appendix B—ETA Regional Administrators

Region 1

Mr. Joseph Stoltz, Regional Administrator, U.S. Department of Labor Employment and Training Administration, J.F.K. Federal Building, Room E–350, Boston, MA 02203, Phone: (617) 788–0170 Fax: (617) 788–0101, URL: *http://www.doleta.gov/regions/reg01bos/*.

Note: This Regional office serves the following states: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region 2

Ms. Lenita Jacobs-Simmons, Regional Administrator, U.S. Department of Labor ETA, Suite 825 East, The Curtis Center, 170 South Independence Mall West, Philadelphia, PA 19106, Phone: (215) 861–5200.

Note: This Regional office serves the following states: Delaware, Washington DC, Maryland, Pennsylvania, Virginia, and West Virginia.

Region 3

Helen N. Parker, Regional Administrator, U.S. Department of Labor Employment and Training Administration, Atlanta Federal Center, Rm. 6M12, 61 Forsyth Street, Atlanta, GA 30303, Phone: (404) 562–2092 Fax: (404) 562–2149.

Note: This Regional office serves the following states: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region 4

Joseph Juarez, Regional Administrator, U.S. Department of Labor Employment & Training Administration, 525 Griffin Street, Room 317, Dallas, TX 75202, Phone: (214) 767–8263 Fax: (214) 767–5113, Email: *juarez.joseph@dol.gov*.

Note: This Regional office serves the following states: Arkansas, Louisiana, New Mexico, Oklahoma, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, and Texas.

Region 5

Byron Zuidema, Regional Administrator, U.S. Department of Labor Employment & Training Administration, 230 South Dearborn Street, Room 638, Chicago, IL 60604, Phone: (312) 353–0313 Fax: (312) 353–4474, Email: *zuidema.bryon@dol.gov*.

Note: This Regional office serves the following states: Illinois, Indiana, Michigan, Minnesota, Ohio, Iowa, Kansas, Missouri, Nebraska, and Wisconsin.

Region 6

John Humphreys, Acting Regional Administrator, U.S. Department of Labor Employment & Training Administration, P.O. Box 193767 71 Stevenson St., Suite 830, San Francisco, CA 94119–3767, Phone: (415) 975–4610 Fax: (415) 975–4612.

Note: This Regional office serves the following states: Arizona, California, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington, and Guam.

[FR Doc. 04–9338 Filed 4–26–04; 8:45 am]

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Federal Register

Tuesday,
April 27, 2004

Part VI

The President

Proclamation 7775—Jewish Heritage Week, 2004

Federal Register
Vol. 69, No. 81
Tuesday, April 27, 2004

Presidential Documents

Title 3—

The President

Proclamation 7775 of April 23, 2004

Jewish Heritage Week, 2004

By the President of the United States of America

A Proclamation

Jewish Heritage Week commemorates the rich history of the Jewish people and the many contributions Jewish Americans have made to our Nation. This year marks the 350th anniversary of the first permanent Jewish settlement in North America, in what is known today as New York. We honor the courage and perseverance of these Jewish immigrants and their descendants, and we celebrate their steadfast dedication to the ideals that make America strong.

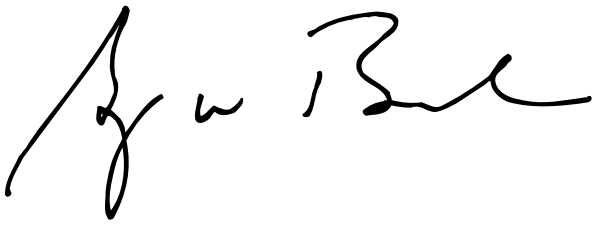
Through their stories of tragedy and survival, the Jewish people demonstrate their unyielding faith and share with us the important truth that even in the face of terrible tragedy, hope endures. Many Jews came to America in search of a land of freedom and opportunity, and we must work to preserve their stories for future generations. The lessons of these stories are timeless and help guide us through the challenges ahead.

Over the past three and a half centuries, Jewish Americans have helped shape the history and culture of our Nation. As scientists, physicians, social workers, educators, artists, businessmen, and in many other professions, Jewish citizens have contributed to the strength of our country. Their commitment to religious freedom, respect for diversity, and belief in democracy have enriched our society and helped make America a better place for all. During this historic time, we are particularly grateful for the many Jewish Americans who serve in our military. Their efforts help advance the cause of freedom and provide hope for people around the world.

As we observe Jewish Heritage Week, we remember the proud legacy and determination of the Jewish people and their strong dedication to faith, family, and service.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 25 through May 2, 2004, as Jewish Heritage Week. I call upon all Americans to observe this week with appropriate programs and activities that highlight and honor the contributions Jewish Americans have made to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–9706
Filed 4–26–04; 11:27 am]
Billing code 3195–01–P

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Federal Register

Vol. 69, No. 81

Tuesday, April 27, 2004

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FEDERAL REGISTER PAGES AND DATE, APRIL

17033–17282 1
17283–17584 2
17585–17898 5
17899–18244 6
18245–18470 7
18471–18800 8
18801–19076 9
19077–19310 12
19311–19752 13
19753–19920 14
19921–20536 15
20537–20804 16
20805–21038 19
21039–21392 20
21393–21688 21
21689–21940 22
21941–22376 23
22377–22716 26
22717–23086 27

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

51 18801

3 CFR

Proclamations:
7765 18465
7766 18467
7767 18469
7768 19077
7769 19307
7770 19751
7771 20537
7772 21683
7773 21685
7774 21687
7775 23085

Executive Orders:
13334 19917

Administrative Orders:
Presidential Determinations:
No. 2004–26 of March 24, 2004 21675
No. 2004–27 of April 6, 2004 21677
No. 2004–28 of April 14, 2004 21679

5 CFR

537 21039

Proposed Rules:
1650 18294
1653 18294
1655 18294
1690 18294

7 CFR

301 21039
319 21941
701 22377
772 18471
905 19079
916 19753
917 19753
925 21689
929 18803
956 22377
979 21947
981 21692
982 19082
983 17844
984 17899
989 21695
1000 21950
1001 21950
1005 21950
1006 21950
1007 21950
1030 21950
1032 21950
1033 21950
1124 21950
1126 21950
1131 21950

Proposed Rules:
28 22458
272 20724
273 20724
301 19950
330 17984
761 20834
762 20834
763 20834
764 20834
765 20834
766 20834
767 20834
768 20834
769 20834
926 19118
1033 19292
1124 18834
1150 22690
1160 22690
1205 22690
1207 22690
1209 22690
1210 22690
1215 22690
1216 .....21439, 22690
1218 22690
1219 22690
1220 22690
1230 22690
1240 22690
1250 22690
1260 22690
1280 22690

8 CFR

103 20528

Proposed Rules:
103 18296

9 CFR

1 17899
2 17899
3 17899
77 20805
93 21040
94 21042
98 21042
301 18245
309 18245
310 18245
311 18245
313 18245
318 18245
319 18245
320 .....18245, 21047
381 21047

10 CFR

170 22664
171 22664

Proposed Rules:
9 22737
71 21978

11 CFR

Proposed Rules:
110 ..... 18301, 18841

12 CFR

3 22382
208 22382
225 22382
229 19921
325 22382
335 19085
567 22382
609 21699
611 21699
612 21699
614 21699
615 21699
617 21699
1700 18808

Proposed Rules:
32 21978
222 19123
303 20558
701 21439
705 21443
742 21439
1710 19126

13 CFR

102 21952

14 CFR

11 22385
23 22717
25 ..... 18246, 19311, 22720
39 ..... 17033, 17034, 17901, 17903, 17905, 17906, 17909, 17911, 17913, 17914, 17915, 17917, 17918, 17919, 17921, 17924, 17925, 18250, 19313, 19618, 19756, 19758, 19759, 20539, 20809, 20811, 20815, 20817, 20818, 21049, 21393, 21395, 21397, 21401, 21402, 21699, 21701, 22386, 22388, 22389, 22392
71 ..... 17283, 19314, 19315, 19316, 19317, 19318, 19319, 19922, 19923, 20820, 20821, 20822, 20823, 21404, 22394, 22395, 22396, 22397, 22398, 22599, 22730
73 ..... 18471, 21053
77 22732
91 21953
97 17284
121 19761
135 18472
1260 21703

Proposed Rules:
39 ..... 17072, 17073, 17076, 17077, 17080, 17082, 17084, 17086, 17088, 17091, 17095, 17097, 17101, 17103, 17105, 17107, 17109, 17111, 17113, 17115, 17610, 17984, 17987, 17989, 17991, 17993, 17996, 18304, 18306, 18843, 18845, 18848, 19132, 19135, 19777, 19950, 19952, 19954, 19956, 20566, 21444, 21766, 21768, 21771, 21774, 22459, 22461, 22743, 22745
61 21073
71 ..... 18308, 18309, 18508, 19359, 19360, 19958, 19960, 19961, 19962, 19963, 20834, 20835, 20837, 21447, 21448, 21449
91 21073
119 21073
121 21073
135 21073
136 21073
399 21450

15 CFR

738 21055
740 21055
774 17926

16 CFR

316 21024
1210 19762

Proposed Rules:
316 18851
682 21388
801 18686
802 18686
803 18686

17 CFR

200 21057
232 ..... 21954, 22704
239 ..... 22300, 22704
249 22704
259 22704
269 22704
274 ..... 22300, 22704

Proposed Rules:
30 17998
230 21650
232 17864
239 21650
240 ..... 17864, 21650
249 ..... 17864, 21650

18 CFR

Proposed Rules:
1 21777

19 CFR

Proposed Rules:
24 18296

20 CFR

404 19924
641 19014

Proposed Rules:
404 18310

21 CFR

Ch. 1 17285
1 ..... 19763, 19765, 19766
20 19766
173 17297
201 18255
206 18728
250 18728
312 17927
314 18728
520 21956
522 17585
573 19320
600 18728
601 18728
606 18255
610 18255
807 18472
1308 17034

Proposed Rules:
Ch. 1 17615
101 20838
201 21778
208 21778
209 21778

22 CFR

126 18810

24 CFR

Proposed Rules:
30 19906
200 21036
203 19906
320 19746

25 CFR

Proposed Rules:
30 20839
37 20839
39 20839
42 20839
44 20839
47 20839

26 CFR

1 ..... 17586, 21405, 22399

Proposed Rules:
1 ..... 17117, 17477, 18314, 21454, 22463
20 20840
301 ..... 17117, 20840

27 CFR

9 20823

28 CFR

803 21058
804 21059

29 CFR

35 17570
541 22122
1952 ..... 20826, 20828
1981 17587
4022 19925
4044 ..... 19925, 22599

Proposed Rules:
1910 17774
1917 19361
1918 19361
1926 ..... 20840, 22748

30 CFR

75 17480
925 19927
931 19321

Proposed Rules:
200 19137
917 21075

31 CFR

1 17298
103 ..... 19093, 19098
240 17272

32 CFR

199 17035
719 20540
725 20540
727 20541
752 20542
1602 20542
1605 20542
1609 20542
1656 20542
2001 17052

Proposed Rules:
519 18314

33 CFR

101 17927
104 17927
117 ..... 17055, 17057, 17595, 17597, 18473, 19103, 19325, 20544, 21061, 21062, 21064, 21956, 22733
147 ..... 19933, 21065
165 ..... 18473, 19326, 21067
167 18476
334 ..... 20545, 20546, 20547
402 18811

Proposed Rules:
100 18002
110 ..... 17119, 20568
117 ..... 17122, 17616, 17618, 18004, 22749
165 ..... 18794, 18797, 21981, 22751, 22753
334 20570

34 CFR

99 21670

36 CFR

223 18813
400 17928

Proposed Rules:
13 17355
242 19964
292 21796

37 CFR

1 21704
401 17299

38 CFR

20 ..... 19935, 21068

Proposed Rules:
3 22757
4 22757
17 21075

39 CFR

111 ..... 17059, 22401

Proposed Rules:
111 ..... 19363, 20841, 21455, 22464

40 CFR

9 ..... 19105, 22402
51 21604
52 ..... 17302, 17929, 18815, 19937, 19939, 20548, 21711, 21713, 21715, 21717, 21731, 22441, 22443, 22445, 22447
63 ..... 19106, 19734, 19943, 20968, 21737, 21906, 22602
68 18819
78 21604
80 17932
81 ..... 20550, 21731, 22447
97 21604
141 21958
142 21958
143 21958

147 18478
166 17303
180 ....17304, 18255, 18263, 18275, 18480, 19767, 21959
257 17308
261 21754
262 21737
264 22602
265 22602
271 21962
300 22453
745 18489
799 22402

Proposed Rules:

52 ....17368, 17374, 18006, 18319, 18323, 18853, 19968, 21482, 21797, 21799, 21800, 21983, 22470, 22471
63 ....18327, 18338, 19139, 19743, 19968, 21198
81 ....17374, 18853, 21800, 22471
86 17532
122 18166
136 18166
141 18166
143 18166
257 17380
261 21800
262 21800
264 21198
265 21198
266 21198
270 21198
271 ....21077, 21198
300 19363
403 18166
430 18166
450 22472
455 18166
465 18166

42 CFR

411 17933
414 17935
424 ....17933, 21963

Proposed Rules:

50 20778
93 20778

44 CFR

64 17310
65 ....17597, 17600, 21966, 21969
67 ....17312, 17606, 17608, 21973

Proposed Rules:

67 ....17381, 17619, 17620, 21988, 21989, 21992

45 CFR

1206 19110
2551 20829
2552 19774
2553 20830

46 CFR

515 19774

47 CFR

1 17946
2 ....18275, 18832, 21760
22 17063
24 17063
25 ....18275, 21761
27 17946
73 ....17070, 17071, 19328, 20554, 20555, 20556, 22734
74 17946
80 19947
90 ....17946, 17959
97 21760
101 17946

Proposed Rules:

0 17124
1 ....17124, 18006, 19779
11 18857
13 18007
54 18508
61 ....17124, 18006
64 20845
69 ....17124, 18006
73 ....17124, 17125, 18860, 19363, 19364, 20571
80 18007
87 19140

48 CFR

Ch. 1 ....17740, 17770
1 17741
2 ....17741, 17764
4 17768
8 17741
15 17768
29 17769
31 17764
45 17741
49 17741
52 ....17741, 17770
53 17741
601 19329
602 19329
603 19329
604 19329
605 19329
606 19329
609 19329
611 19329
612 19329
613 19329
616 19329
617 19329
619 19329
622 19329
623 19329
625 19329
626 19329
628 19329
630 19329
632 19329
636 19329
637 19329
642 19329
651 19329
652 19329
653 19329
1801 21761
1803 21761
1804 21761
1805 21761
1806 21761
1807 21761
1808 21761
1809 21761
1811 21761
1812 21761
1813 21761
1814 21761
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1816 21761
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1825 21761
2901 22990
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2943 22990
2944 22990
2945 22990
2946 22990
2947 22990
2948 22990
2949 22990
2950 22990
2951 22990
2952 22990
2953 22990

Proposed Rules:

19 18244
45 17584
52 17584
217 21996
219 ....21996, 21997
1842 21804
1843 21804
1844 21804
1845 21804
1846 21804
1847 21804
1848 21804
1849 21804
1850 21804
1851 21804

49 CFR

172 20831
192 ....18228, 21975
219 19270
375 17313
512 21409
541 17960
542 17960
543 17960
571 18496
579 20556
595 21069
1104 18498
1572 17969

Proposed Rules:

541 18010
544 18861
571 ....17622, 18015, 22483
572 17622

50 CFR

17 ....18279, 18499, 21425
92 17318
216 17973
223 18444
224 18444
229 21070
622 19346
648 ....17980, 18291, 22454, 22734, 22906
660 ....17329, 18444, 19347
679 ....17982, 19116, 19358, 19776, 20833, 21975

Proposed Rules:

14 21806
17 ....17383, 17627, 17634, 18016, 18018, 18035, 18515, 18516, 18770, 19364, 19620, 21484, 23024
100 19964
223 20571
229 19365
300 19147
635 19147
648 19805

REMINDERS

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RULES GOING INTO EFFECT APRIL 27, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions (sweet) grown in—
Washington and Oregon; published 4-26-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Rulemaking petitions:
Colo Void Clause Coalition; antenna systems co-location, best voluntary practices; published 4-27-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
Northeast and other marketing areas; comments due by 5-3-04; published 3-2-04 [FR 04-04724]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle—
State and area classifications; comments due by 5-3-04; published 3-2-04 [FR 04-04599]

Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 5-7-04; published 3-8-04 [FR 04-05128]

Plant-related quarantine, foreign:
Karnal bunt; wheat importation; comments due by 5-3-04; published 3-3-04 [FR 04-04723]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:
Direct Farm Loam Programs; regulatory streamlining; comments due by 5-4-04; published 4-19-04 [FR 04-08772]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Bovine spongiform encephalopathy policies—
Preliminary regulatory impact analysis for interim regulations; availability and comment request; comments due by 5-7-04; published 4-7-04 [FR 04-07925]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
Electric System Emergency Restoration Plan; comments due by 5-3-04; published 3-19-04 [FR 04-06167]

AGRICULTURE DEPARTMENT

Religious organizations; participation in USDA programs; equal treatment for faith-based organizations; comments due by 5-4-04; published 3-5-04 [FR 04-05092]

AMERICAN BATTLE MONUMENTS COMMISSION

Employee responsibilities and conduct; removal of superseded regulations and addition of residual cross references; comments due by 5-5-04; published 4-6-04 [FR 04-07675]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
Sea turtle conservation requirements—
Shrimp trawling requirements; Atlantic Ocean and Gulf of Mexico; turtle excluder devices; comments due by 5-3-04; published 4-16-04 [FR 04-08698]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
Hazardous material safety data; comments due by 5-3-04; published 3-3-04 [FR 04-04749]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Pulp and paper industry; comments due by 5-6-04; published 4-15-04 [FR 04-08582]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Washington; comments due by 5-3-04; published 4-2-04 [FR 04-07470]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Pennsylvania; comments due by 5-3-04; published 4-2-04 [FR 04-07471]

Air quality implementation plans; approval and promulgation; various States:
Florida; comments due by 5-6-04; published 4-6-04 [FR 04-07646]
New Jersey; comments due by 5-7-04; published 4-7-04 [FR 04-07863]
New York; comments due by 5-7-04; published 4-7-04 [FR 04-07862]

Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Gellan gum; comments due by 5-3-04; published 3-3-04 [FR 04-04707]
Yeast extract hydrolysate from saccharomyces cerevisiae; comments due by 5-3-04; published 3-3-04 [FR 04-04706]

Solid wastes:
Hazardous waste; identification and listing—
Exclusions; comments due by 5-3-04; published 3-19-04 [FR 04-06216]
State solid waste landfill permit programs—
Delaware and Maryland; comments due by 5-3-04; published 4-2-04 [FR 04-07468]
Delaware and Maryland; comments due by 5-3-04; published 4-2-04 [FR 04-07469]

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 5-7-04; published 3-8-04 [FR 04-05109]

Water supply:
National primary drinking water regulations—
Long Term Enhanced Surface Water Treatment Rule, Surface Water Treatment Rule, etc.; corrections and clarification; comments due by 5-3-04; published 3-2-04 [FR 04-04464]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency information collection activities; proposals, submissions, and approvals; comments due by 5-3-04; published 3-4-04 [FR 04-04090]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
International telecommunications service provisions; amendments; comments due by 5-6-04; published 3-22-04 [FR 04-06317]

Radio frequency devices:
Broadband power line systems; comments due by 5-3-04; published 3-17-04 [FR 04-05271]
Cognitive radio technologies and software defined radios; comments due by 5-3-04; published 2-17-04 [FR 04-03240]

Radio stations; table of assignments:
Georgia; comments due by 5-6-04; published 3-30-04 [FR 04-07096]
Massachusetts and New York; comments due by

5-3-04; published 3-29-04 [FR 04-06943]

FEDERAL DEPOSIT INSURANCE CORPORATION

Transactions with affiliates; filing procedures; comments due by 5-3-04; published 3-17-04 [FR 04-05928]

FEDERAL ELECTION COMMISSION

Contribution and expenditure limitations and prohibitions:
Foreign national donations acceptance; comments due by 5-7-04; published 4-7-04 [FR 04-07855]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift Savings Plan:
Funds withdrawal; court orders and legal processes, and loan program; comments due by 5-7-04; published 4-7-04 [FR 04-07610]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Hazardous material safety data; comments due by 5-3-04; published 3-3-04 [FR 04-04749]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Secondary direct food additives—
Cetylpyridinium chloride; comments due by 5-3-04; published 4-2-04 [FR 04-07399]

Human drugs:
Medicare Prescription Drug, Improvement, and Modernization Act of 2003—
Abbreviated new drug applications regulations; issues identification; comment request; comments due by 5-3-04; published 3-3-04 [FR 04-04775]

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:
Florida; comments due by 5-3-04; published 3-4-04 [FR 04-04781]
New York; comments due by 5-5-04; published 4-5-04 [FR 04-07625]
South Carolina; comments due by 5-3-04; published 3-4-04 [FR 04-04778]

Regattas and marine parades:
Cock Island Race; comments due by 5-3-04; published 3-3-04 [FR 04-04647]

Vessel documentation and measurement:
Lease financing for coastwise trade; comments due by 5-4-04; published 2-4-04 [FR 04-02231]

HOMELAND SECURITY DEPARTMENT

Immigration:
Aliens—
Asylum claims made in transit and at land border ports-of-entry; U.S.-Canada agreement; implementation; comments due by 5-7-04; published 3-8-04 [FR 04-05077]

Organization, functions, and authority delegations:
Customs officers; overtime compensation and premium pay; comments due by 5-7-04; published 4-7-04 [FR 04-07857]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants:
Faith-based organizations; equal participation; agency policy; comments due by 5-3-04; published 3-3-04 [FR 04-04811]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Critical habitat designations—
Bull trout; Klamath and Columbia Rivers; comments due by 5-5-04; published 4-5-04 [FR 04-07548]
Peirson's milk-vetch; comments due by 5-6-04; published 4-6-04 [FR 04-07694]

JUSTICE DEPARTMENT

Executive Office for Immigration Review:
Asylum claims made by aliens arriving from Canada at land border ports-of-entry; comments due by 5-7-04; published 3-8-04 [FR 04-05065]

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:
District of Columbia and United States Codes; prisoners serving sentences—
Parole release hearings conducted by video conferences; pilot project; comments due by 5-4-04; published 2-4-04 [FR 04-02105]

LABOR DEPARTMENT

Federal Contract Compliance Programs Office

Agency information collection activities; proposals, submissions, and approvals; comments due by 5-3-04; published 3-4-04 [FR 04-04090]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Hazardous material safety data; comments due by 5-3-04; published 3-3-04 [FR 04-04749]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation—
Regulatory review for reduction of burden on federally-insured credit unions; comments due by 5-4-04; published 2-4-04 [FR 04-02279]

PERSONNEL MANAGEMENT OFFICE

Agency information collection activities; proposals, submissions, and approvals; comments due by 5-3-04; published 3-4-04 [FR 04-04090]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 5-3-04; published 4-1-04 [FR 04-07292]
Boeing; comments due by 5-4-04; published 3-5-04 [FR 04-04660]
Bombardier; comments due by 5-3-04; published 4-1-04 [FR 04-07285]
de Havilland; comments due by 5-7-04; published 4-12-04 [FR 04-08221]
Dornier; comments due by 5-3-04; published 4-1-04 [FR 04-07303]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 5-3-04; published 4-1-04 [FR 04-07355]
Empresa Brasileria de Aeronautica S.A. (EMBRAER); comments due by 5-6-04; published 4-6-04 [FR 04-07713]
Pilatus Aircraft Ltd.; comments due by 5-7-04; published 4-9-04 [FR 04-08054]
Rolls-Royce plc; comments due by 5-3-04; published 3-4-04 [FR 04-04799]
Saab; comments due by 5-3-04; published 4-1-04 [FR 04-07291]

Airworthiness standards:
Special conditions—
Gulfstream Model GIV-X Airplane; comments due by 5-7-04; published 4-7-04 [FR 04-07877]

Airworthiness standards:
Special conditions—
Agusta S.p.A. Model AB139 helicopters; comments due by 5-4-04; published 3-5-04 [FR 04-05028]

Class E airspace; comments due by 5-3-04; published 3-19-04 [FR 04-06154]

TRANSPORTATION DEPARTMENT

Maritime Administration

Vessel documentation and measurement:
Lease financing for coastwise trade; comments due by 5-4-04; published 2-4-04 [FR 04-02231]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Notional principal contracts; contingent nonperiodic payments; comments due by 5-4-04; published 2-26-04 [FR 04-04151]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2057/P.L. 108–220
To require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel. (Apr. 22, 2004; 118 Stat. 618)
Last List April 15, 2004

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