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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, and 126

RIN 3245–AE66

Small Business Size Regulations; Government Contracting Programs; HUBZone Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Historically Underutilized Business Zone (HUBZone) Program. In particular, this rule addresses statutory amendments made by the Small Business Reauthorization Act of 2000, clarifies several regulations, and makes some technical changes, including changes to Web site addresses. In addition, this rule amends those size and government contracting regulations that address subcontracting limitations.

DATES: This rule is effective June 23, 2004.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Associate Administrator for the HUBZone Program, (202) 205–8885 or by e-mail, at *hubzone@sba.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2002, the U.S. Small Business Administration (SBA or Agency) published in the **Federal Register**, 67 FR 8739, a proposed rule to amend its regulations governing the HUBZone program. SBA had proposed regulations addressing amendments made to the HUBZone Act by the Small Business Reauthorization Act of 2000 (Reauthorization Act), Public Law 106–554. Specifically, the Reauthorization Act amended the eligibility requirements for small business concerns (SBCs) owned by Tribal Governments or Community Development Corporations (CDCs). Further, it amended the definition of HUBZone to include ''redesignated areas,'' and added definitions for the terms ''Indian Reservation'' and ''Alaska Native Corporation.'' This final rule addresses these statutory amendments, clarifies several regulations, and makes some technical changes, including changes to Web site addresses.

In addition, SBA has amended its regulations that address subcontracting limitations. Specifically, SBA has consolidated all of the subcontracting limitation requirements into one regulation, rather than have them scattered throughout SBA's chapter of the Code of Federal Regulations. In addition, SBA has clarified how to petition for changes in the subcontracting limitation requirements.

Discussion of Comments on the Proposed Rule

The comment period for the proposed rule closed on February 27, 2002. SBA extended the comment period because it believed that affected businesses needed more time to adequately respond. 67 FR 8739 (Feb. 26, 2002). The comment period was extended through March 29, 2002.

SBA received 977 comments on the proposed rule. The overwhelming majority of the comments addressed the issue of the relationship of the HUBZone Program to the 8(a) Business Development (8(a)BD) Program. This issue is discussed below. The majority of the other comments supported the proposed regulatory amendments. A few commenters recommended modifications to several of the proposed amendments. SBA considered all of the comments and recommendations in developing this final rule and the rule includes changes based on some of the comments received.

Section-by-Section Analysis of Comments

In § 121.406, SBA proposed amending paragraph (b), pertaining to the application of the nonmanufacturer rule. Specifically, SBA proposed permitting a nonmanufacturer to supply the product of any domestic business, small or large, and still be considered small with respect to any contract below the simplified acquisition threshold. This change corresponded to a similar proposed change made in this rule for the HUBZone Program in proposed § 126.601(e)(2) (discussed later in the preamble).

SBA received one comment on this proposed section. The commenter stated that this proposed section could dilute the impact small business programs have in fostering growth and opportunity for the small business sector. This commenter believed that SBA should research this issue further to determine the true impact of such a blanket waiver for small business programs. SBA has determined that this issue needs further evaluation. Consequently, SBA has decided not to amend the rule at this time.

SBA received one comment on the proposed amendments to § 125.6, which added the subcontracting limitations for qualified HUBZone SBCs (set forth in § 126.700) so that all such subcontracting limitations would be located in one place and easy for SBCs and contracting officials to locate. In addition, SBA proposed language explaining when it may use different subcontracting limitation percentages. The commenter stated that SBA should use the term ''will perform'' rather than ''spends'' when defining the subcontracting limitations for qualified HUBZone SBCs. In response, SBA notes that the statutory requirements for these limitations require that the qualified HUBZone SBC ''expend'' a certain percentage of the cost of contract performance or manufacturing costs on certain employees or in one or more HUBZones. Therefore, SBA adopts the rule as proposed. However, because of the change to § 126.700 discussed below, this rule changes the HUBZone prime contractor performance of work requirements for construction to clarify that it is the prime HUBZone contractor, and not the prime plus other HUBZone subcontractors, that must perform 15% (general construction) or 25% (special trade construction) of the contract.

SBA received one comment concerning the definition of ''AA/HUB'' set forth in § 126.103. This commenter stated that SBA should not define the ''AA/HUB'' to mean the ''Associate Administrator for HUBZone Empowerment Contracting'' because the program is titled the ''HUBZone Program'' and not the ''HUBZone Empowerment Contracting Program.'' SBA concurs and has not amended the current regulation, which defines ''AA/HUB'' to mean the Associate Administrator for the HUBZone Program.

One commenter recommended that SBA place a definition for ''ANCSA'' in § 126.103. This commenter believes that the term, which refers to the Alaska Native Claims Settlement Act, is used several times in the regulations and therefore a definition is needed to eliminate confusion. Also, the commenter recommended referring to ANCSA as the ''Alaska Native Claims Settlement Act, as amended'' because the act has been amended several times since its inception. SBA concurs with these recommendations and has made those changes in this regulation.

SBA received one comment on the definition of ''Community Development Corporation (CDC),'' set forth in § 126.103. This commenter stated that the definition of CDC should refer to ''part 1 of subchapter A of the Community Economic Development Act of 1981'' and not the open-ended reference proposed. SBA concurs and has amended the final regulation accordingly.

SBA received several comments on the proposed definition for the term ''employee.'' SBA proposed removing the current provision concerning ''full-time equivalents'' and allowing persons employed on a full-time or part-time basis to be considered employees of the concern. In addition, SBA proposed allowing leased or temporary employees to be counted as employees of the concern. The proposed definition also stated that volunteers would not be counted as an employee of a HUBZone SBC. The proposed rule defined a volunteer as a person who receives no compensation for work performed. With this definition, SBA intended that a person who receives food, housing, or other non-monetary compensation in exchange for work performed would generally not be considered a volunteer and could therefore be considered an employee of the HUBZone SBC. SBA reiterated that it would use the ''totality of circumstances'' to determine whether a person is an ''employee.''

SBA received several comments expressing concern over the proposed definition. One commenter believed the proposed rule could cause a large-scale shift of workers from full-time equivalents to leased or part-time status with reduced benefits. Another commenter believed that this change would weaken the nexus between participating firms and HUBZone areas. In addition, one commenter expressed concern that companies could intentionally exploit the change and hire temporary employees only to gain HUBZone certification or to receive HUBZone contracts. One commenter recommended that, to prevent such abuse, the definition of employee should include a requirement that a certain percentage of HUBZone employees must be paid the same as, or have the same job classifications as, non-HUBZone employees. Another commenter believed that an individual should be required to work a certain number of hours before he or she is counted as an employee for purposes of the 35%, reasoning that a concern could get around the 35% requirement by hiring various HUBZone residents to work one, two or some other number of minimum hours per week.

One commenter stated that using the totality of circumstances to determine whether part-time employees are bona fide employees and allowing non-monetary compensation to be acceptable are invitations to arbitrariness. Another commenter stated that the definition of volunteer was too narrow.

In comparison, several commenters believe that the proposed rule would create more job opportunities for HUBZone residents and agreed that leased and temporary employees represent a substantial portion of today's workforce. One commenter noted that several firms are using the current exemption for leased and temporary employees to qualify for the program by claiming only a few employees, when in reality they have many employees, all of whom are leased and very few of whom live in a HUBZone. One commenter agreed with the proposed rule, but suggested that SBA expand the definition to allow employees of co-employer arrangements to be treated as employees of a HUBZone SBC.

As a result of the numerous comments received and the issues raised, SBA has decided not to implement this aspect of the proposed rule. The Agency plans to issue an Advanced Notice of Proposed Rulemaking (ANPRM) in the near future so that it can further examine this issue and determine the best method for determining ''employees'' for HUBZone Program purposes.

SBA received one comment on the definition of ''HUBZone SBC.'' The commenter suggested that SBA clarify that Alaska Native Corporations (ANCs) or ANC-related entities must be small to be eligible for the program. SBA concurs and has amended the regulation accordingly.

SBA also received comments on the definition of ''Indian Reservation.'' One commenter was against any changes that would increase Native American lands for HUBZone participation. Other commenters expressed support for proposals that re-classified the guidelines for determining Native American lands. One commenter stated that the proposed regulations should include all formerly-held Indian land in Oklahoma and not just reservations. The commenter believed that this would benefit Oklahoma small businesses trying to participate in the HUBZone Program by expanding the areas classified as HUBZones. Another commenter recommended that SBA clarify the rule with respect to Indian Reservations in Oklahoma and not ''bury'' it deep within a subparagraph where it may be overlooked.

SBA has amended the definition of ''Indian Reservation'' so that the paragraph concerning Oklahoma does not appear ''buried'' in the definition. In addition, SBA notes that the definition of Indian reservation for purposes of the HUBZone Program is statutory. The regulation sets forth the statutory requirements. As stated in the preamble to the proposed regulation, essentially, the statutory definition of ''Indian Reservation'' for HUBZone Program purposes includes federally-recognized Indian reservations, Indian communities dependent on the Federal Government, and certain federal Indian allotments (parcels of land created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians). Pursuant to a decision by the U.S. Supreme Court, *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), the new statutory definition of ''Indian Reservation'' does not include lands transferred to Alaskan Natives pursuant to ANCSA. In the state of Oklahoma, an ''Indian Reservation'' includes a federally recognized Indian reservation and trust land. SBA has been and intends to continue working with the U.S. Department of the Interior, and specifically the Bureau of Indian Affairs, to appropriately identify these areas.

SBA received one comment suggesting that it cross-reference the ''attempt to maintain'' references in §§ 126.200, 126.601(c)(4), and 126.602 to the definition of the term set forth in § 126.103 because SBCs may not realize that the phrase has been defined in the regulations. SBA concurs and has made the changes in the final rule and has also added a reference to the term in § 126.401(b).

SBA received two comments concerning the eligibility, in general, of SBCs. Both comments concerned ownership of a HUBZone SBC by U.S. citizens. One commenter stated that the regulations should not preclude ownership by non-U.S. citizens. SBA notes that this is a statutory requirement and that the regulations follow the

statute. Another commenter favored allowing publicly held small businesses to participate in the HUBZone Program because it would help a greater number of small businesses. SBA notes that publicly-held businesses have always been able to participate in the program, so long as they meet the eligibility requirements.

SBA received three comments regarding the eligibility requirements for Tribally-owned concerns. In the proposed rule, SBA amended § 126.200 to establish eligibility requirements for such concerns because Congress had changed these requirements with the enactment of the Reauthorization Act. According to the Reauthorization Act, SBCs owned by Indian Tribal Governments or tribal corporations must certify: (1) That they are owned by an Indian Tribal Government, by a wholly-owned tribal corporation, or owned in part by an Indian Tribal Government or tribal corporation and in part by another SBC or U.S. citizens, and (2) when the concern obtains a HUBZone contract, that at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining any such Indian reservation.

One commenter did not support requiring a Native American concern to have 35% of its employees reside on or adjacent to the Indian reservation during the performance of a contract. This commenter believed that the requirement is too stringent and contradicts the requirements for other HUBZone SBCs. SBA notes that this requirement is statutory and the regulation states the same as the statute on this point.

In addition, one commenter stated that SBA's regulations do not clarify that Tribally-owned concerns must ''attempt to maintain'' the relevant 35% employment requirement and must comply with the limitations on subcontracting. SBA concurs with this comment and has amended § 126.200 to clarify that Tribally-owned concerns must ''attempt to maintain'' the 35% employment requirement during the performance of a HUBZone contract. SBA believes, however, that the regulations are clear that all qualified HUBZone SBCs must meet the subcontracting limitations set forth in the statute and regulations, and therefore it is unnecessary to amend the regulations with respect to that issue.

As discussed above, the statutory amendments provide that an Indian Tribal Government or tribal corporation may own a HUBZone SBC ''in part'' with a SBC or U.S. citizens. For example, an SBC in which a Tribal Government or tribal corporation owned 1% or less could qualify for the program if the other owners were SBCs or U.S. citizens. Further, there is no principal office eligibility requirement for such applicants. Thus, SBA stated in its preamble that it was considering whether or not to require a Tribal Government or tribal corporation own at least 51% of the HUBZone SBC and specifically requested comments addressing this proposal. In the proposed regulation, SBA proposed no specific ownership interest by a Tribal Government or tribal corporation.

SBA received two comments on this specific issue. One commenter supported the proposal to amend the ownership percentage to either 51% or 100% for tribally owned HUBZone SBCs because it will expand opportunities for Native American firms. This commenter recommended allowing only Native American, small and disadvantaged businesses (SDBs) or SBCs owned by U.S. citizens to own the other part of the HUBZone SBC. Another commenter disagreed with the proposal to require 51% ownership for tribally owned HUBZone SBCs. Although SBA proposed the rule to reduce the possibility of ''fronting,'' this commenter believes that Indian Tribes have additional restrictions (35% of the employees must be performing on the HUBZone contract), which are more stringent, and therefore the 51% requirement is unnecessary.

After further review of the issues and comments received, SBA concurs that it is unnecessary to require 51% ownership for tribally-owned HUBZone SBCs, for the reasons stated above. However, SBA believes that it does not matter who owns the other ''part'' of the Tribally-owned HUBZone SBC, so long as it is an SBC or U.S. citizens and the HUBZone SBC meets the contract performance requirements. SBA believes this will help Native American communities. Therefore, SBA retains the rule as proposed.

SBA received one comment pertaining to § 126.201, which addresses ownership of a qualified HUBZone SBC. The commenter stated that it was in favor of allowing certain types of Employee Stock Option Plans (ESOPs) to participate in the HUBZone Program. However, the commenter argued that some forms of ESOPs have corporate structures that restrict shareholder rights. As a result of these restrictions, such entities should be eligible to participate in the program and the employees should not be considered to ''own or control'' the company. Therefore, this commenter believed that the employees should not be counted toward the 100% U.S. ownership requirement. The commenter stated that, in the alternative, SBA should create a de minimus exception for non-U.S. citizen ownership.

SBA notes that it agrees with the commenter as a matter of public policy (SBA does not want to encourage or make incentives for firms to discriminate in hiring based on national origin), but the Agency's actions are constrained by the statute. The U.S. citizen ownership requirement is statutory. With only certain statutory exceptions for CDCs, ANCs, and Tribally-owned concerns, a HUBZone SBC must be owned and controlled 100% by U.S. citizens. Therefore, SBA can not create a de minimus exception to the statutory rule. Further, SBA has researched the issue pertaining to ESOPs and reviewed the comment carefully. Under an ESOP, employees may purchase or are awarded stock in the employing firm. The stock held by most ESOPs are placed in trust. The employee can vote its shares through a trustee or the trustee has the authority to vote the shares. Both forms of ESOPs are variations of ownership of a firm under a trust arrangement. SBA considers any person who has a legal or equitable interest in the concern, or who owns stock, whether voting or non-voting, to be an owner. Therefore, under either form of ESOP, the stock trustees and the plan members must be regarded as the owners of the firm's stock for purposes of the HUBZone Program. This final rule adopts this regulation as proposed.

SBA received one comment on § 126.205, which clarifies that all SBCs, and not just 8(a) Participants, women-owned businesses, and SDBs, may be qualified HUBZone SBCs, if they meet the HUBZone Program's eligibility requirements. The commenter concurs with this re-draft but recommends that SBA consider adding a statement that participation in other SBA programs is not a requirement for participation in the HUBZone Program. SBA concurs with this recommendation and has amended this regulation accordingly.

SBA received one comment on § 126.303, which addresses the filing of a HUBZone application. The commenter stated that SBA should clarify that applicants need only submit a written or an electronic application. SBA concurs and has amended this regulation accordingly.

SBA received one comment on § 126.304, which addresses what concerns must submit with their application for certification into the

program. The commenter recommended that, with respect to determining the location of Indian Reservations, SBA should clarify in the regulations where the HUBZone maps referenced can be found. SBA concurs and has added the Web site address for its HUBZone maps to the regulations.

SBA received one comment on § 126.306, which addresses how SBA will process applications to the HUBZone Program. The commenter recommended that SBA require applicants to notify SBA, prior to certification, of all material changes that could affect eligibility so that SBA could rely on the application materials as submitted. SBA concurs with this recommendation, but has amended § 126.304(a) and not § 126.306, accordingly. In addition, SBA notes that this amendment does not preclude SBA from requesting additional information or clarification of information.

SBA received one comment concerning § 126.307, which concerns the ''List'' of qualified HUBZone SBCs. The commenter recommended that SBA clarify that it is necessary to run a search on Central Contractor Registration (CCR) Dynamic Small Business Search (DSBS), (*http://www.dsbs.sba.gov/dsbs/dsp_dsbs.cfm*) or its successor, if any, to find qualified HUBZone SBCs because there is no ''List,'' per se, on that Web site. SBA concurs and has amended the regulation accordingly.

SBA received one comment on § 126.308, which addresses what happens if SBA inadvertently omits a qualified HUBZone SBC from the ''List.'' The commenter stated that SBA should allow the qualified HUBZone SBC to show the contracting officer (CO) SBA's certification and that the concern must be on the ''List'' within 30 calendar days thereafter. The commenter believed that this would provide more flexibility to the process. SBA understands the commenter's concern. However, the purpose of the List is to provide COs a quick and accurate mechanism for finding qualified HUBZone SBCs. In those rare circumstances when qualified HUBZone SBCs have been inadvertently omitted from the ''List,'' SBA has quickly resolved the problem. For these reasons, SBA has implemented this rule as proposed.

SBA received one comment on § 126.401(b), which addresses program examinations. The commenter did not agree with the proposal to allow program exams in more than one location because it could be a nuisance to SBCs. SBA notes that the purpose of that provision is to ensure that all concerns certified into the HUBZone Program and receiving the benefits of the program are eligible. If a SBC has more than one office, it may be necessary to visit each office to determine the principal office. However, reviews will occur in the fewest number of offices needed to satisfy the purpose of the review. In performing a program examination, SBA takes into account and attempts to reduce the burden of the exam on the SBC. SBA will ensure that this process is streamlined and not overly burdensome to HUBZone SBCs. This final rule implements the regulation as proposed.

SBA received two comments on § 126.403 which requested that HUBZone SBCs submit updated financial information and information relating to its number of employees to SBA. One commenter stated that instead of requiring SBCs to report this information, SBA should verify initial and continued eligibility of HUBZone SBCs as it pertains to employment automatically by cross-referencing employee data with the IRS using the IRS's Form 941 (Employer's Quarterly Federal Tax Return). The commenter recommended SBA implement an automated system connected to the IRS for financial data reporting instead of the proposed request that SBA collect records and data from SBCs.

SBA plans to research this suggestion further. However, SBA believes that if this recommendation can be implemented, it will take time. In the meantime, SBA needs this information as soon as possible in order to effectively gauge the success of the program.

Another commenter stated that this information request should be mandatory so that the resulting data is reliable. SBA concurs with this comment and agrees that the HUBZone SBC's response to the request for updated financials and employee data should be mandatory and has amended the final rule accordingly. However, because SBA has changed this proposal from a voluntary to a mandatory one, at this time the Agency requests comments on the effects implementing this requirement will have on SBCs. In addition, in order to provide SBCs with sufficient time to set up a recordkeeping system if necessary (although SBA believes that all of this information is information generally collected and retained by SBCs during the course of business) to meet this requirement, or to understand what this requirement entails, SBA does not plan to request this information in the near future.

SBA received two comments on § 126.500, concerning SBA's proposal to change the re-certification period from an annual re-certification to every three years. One commenter stated that the annual re-certification requirement is not a burden and that the 3-year term will only increase the likelihood of a concern falling out of compliance. In addition, the commenter suggested that HUBZone SBCs sign a certification each time they submit a bid stating that they agree to notify the SBA anytime there is a change in the business.

Another commenter supported the change as an administrative convenience for the SBA and HUBZone SBCs. However, the commenter recommended SBA amend this rule to provide a cross-reference to § 126.501, which shows that qualified HUBZone SBCs have a continuing obligation to notify SBA of material changes. In addition, this commenter also recommended that SBA change the section heading to read: ''How does a qualified HUBZone SBC maintain HUBZone certification?'' SBA concurs with this commenter and has retained the three-year re-certification period in this final regulation. SBA believes that protests, program examinations, and the requirement that qualified HUBZone SBCs notify SBA of a material change ensure that only qualified HUBZone SBCs receive HUBZone contracts. In addition, SBA has amended the section heading for § 126.500.

In response to another comment, SBA does not believe that changing the re-certification requirements from one to three years will increase the likelihood of firms receiving benefits from the program that do not in fact qualify as HUBZone SBCs. SBA believes that the more important safeguard to prevent this from occurring is the protest mechanism tied to each contract. Where a firm is the apparent successful offeror because of its HUBZone status (either through the HUBZone price evaluation preference or a HUBZone set aside), other affected firms may challenge the firm's HUBZone status. SBA has found that the procurement community is very able to police itself and stop abuse from occurring. However, SBA notes that should the HUBZone Program Office develop electronic on-line capability to efficiently process re-certification actions in a timely manner and a risk assessment supports the need for such a change, SBA will consider amending the regulation to require annual re-certification.

SBA received only one comment on § 125.501, which addresses a qualified HUBZone SBC's ongoing obligations, such as notification to SBA of any material changes. The commenter stated that SBA should consider a cross-

reference to § 126.200, to direct concerns to a more comprehensive list of HUBZone Program eligibility requirements. SBA concurs with the recommendation and has amended this regulation accordingly. However, SBA notes that the eligibility requirements set forth in § 126.200 do not provide a complete list of areas where notification of material changes is necessary.

SBA received one comment on § 126.503, which addresses de-certification. The commenter suggested that the regulation should be written in a more impartial tone. Although SBA believes that the regulation as proposed is impartial, the Agency has amended the regulation to clarify that it will notify the concern it is proposing de-certification, the reasons for the proposed de-certification, and that the concern must rebut each of the reasons SBA sets forth in the letter.

In addition, with respect to § 126.503, the commenter recommended that SBA check for consistency with respect to who makes the de-certification decision—the AA/HUB or designee, or the Deputy AA/HUB or designee. SBA notes that the Deputy AA/HUB or designee may propose the de-certification and the AA/HUB or designee makes the final decision.

SBA received several comments on proposed § 126.601. SBA received one comment on proposed § 126.601(b), which provided that a qualified HUBZone SBC must be qualified at both bid submission and at contract award. The commenter stated that the proposal is counterproductive and inconsistent with 13 CFR 121.404, which provides that the size of an SBC is determined as of the date of the initial offer, with two exceptions. In addition, the commenter noted that sometimes there is a lengthy time between bid submission and award and this is out of the control of the HUBZone SBC.

SBA notes that a concern that is not a qualified HUBZone SBC at the time it submits its initial offer can not submit an offer on a HUBZone sole source or set-aside contract, or receive the benefits of the HUBZone price evaluation preference. Although it is true that there may be a lengthy time period between bid submission and award, SBA believes that awarding a HUBZone contract to a concern that does not meet the requirements of the program provides no help to the HUBZone community or its residents. Therefore, SBA has decided to implement this rule as proposed.

SBA received several comments on § 126.601(e). SBA proposed amending paragraph (e) and addressing confusion regarding the nonmanufacturer rule. The statutory nonmanufacturer rule generally requires a small business nonmanufacturer to supply the product of a domestic small business manufacturer or processor in connection with an 8(a) or small business set aside supply contract. The SBA Administrator may waive that requirement in certain cases.

The nonmanufacturer rule that currently applies to HUBZone contracts requires a qualified HUBZone SBC nonmanufacturer to supply the product of a qualified HUBZone SBC manufacturer, except that for HUBZone contracts valued at or below $25,000, a qualified HUBZone SBC may supply the end item of any domestic manufacturer, including a large business. The proposed rule clarified that for purposes of a HUBZone contract, there are no waivers of the nonmanufacturer rule. The proposed rule provided, however, that for HUBZone contracts at or below the simplified acquisition threshold (currently $100,000), a qualified HUBZone SBC may supply the end item of any domestic manufacturer, including a large business.

SBA received several comments supporting the need for a waiver provision to the nonmanufacturer rule, similar to the one in the 8(a)BD Program. One commenter stated that the proposed rule precluding waivers would make it difficult for HUBZone SBCs to obtain contracts and argued that since the rule is different from the one set forth in the 8(a)BD Program, there is no real ''parity'' between the two programs. In contrast, one commenter expressed support for the proposed rule precluding waivers of the non-manufacturer rule for the HUBZone Program because the program is intended to foster economic growth and job creation in specific geographic areas and frequent waivers would remove the program's incentives for manufacturers to start operations in distressed areas.

SBA has reviewed these comments and believes that the program is designed to assist HUBZones by assuring that individuals residing in those areas are employed generally by a qualified HUBZone SBC and specifically in connection with the performance of a HUBZone contract. SBA believes that allowing a non-HUBZone manufacturer to be the firm ultimately supplying the product for a HUBZone contract would be contrary to the intent of the program. Therefore, this final rule implements that part of the rule as proposed, in that there are no waivers for the nonmanufacturer rule in the HUBZone Program.

In response to the proposal allowing HUBZone SBCs to supply the end item of any business for acquisitions at or below the simplified acquisition threshold, one commenter stated that it is inconsistent with the ''job creation'' goals of the program. On a similar note, one commenter expressed support for the current nonmanufacturer threshold of $25,000 (where the HUBZone SBC can supply the product of any business for contracts at or below $25,000), rather than the simplified acquisition threshold of $100,000, because contracts below $100,000 are not significant enough to entice manufacturers to move into HUBZone areas due to the costs of setting up such an operation. This commenter also believed that SBA should research this issue further to determine the true impact of such a blanket waiver for acquisitions below the simplified acquisition threshold on small business programs, especially the HUBZone Program. SBA has decided not to implement that part of the proposed rule permitting HUBZone SBCs to provide the end item of any manufacturer or contractor at or below the simplified acquisition threshold.

SBA received one comment on § 126.603, which addresses the marketing of HUBZone contracts. As proposed, the regulation referenced only HUBZone set-asides. The commenter suggested that the regulation refer to all HUBZone contract opportunities, which would include sole source acquisitions, set asides, and full and open competition with a price evaluation preference. SBA concurs and has amended this regulation accordingly.

SBA received one comment supporting the proposal in § 126.605 to allow HUBZone contracts for micropurchases. This final rule implements the proposed regulation.

SBA received several comments concerning § 126.605(b) and § 126.606. Both provisions address the requirement that if an 8(a) Participant is currently performing a requirement, or SBA has accepted that requirement for performance under the authority of the 8(a)BD Program, it cannot be available for a HUBZone contract unless SBA has consented to release the procurement from the 8(a)BD Program. Several commenters thought that SBA had deleted this provision from the regulations and argued that the requirement should be put back in the final regulation. SBA notes that the proposed regulation did not delete the requirement. This final rule slightly amends the wording of § 126.605(b) to clarify that only contracts being performed by 8(a) Participants through the 8(a)BD Program are not available for award through the HUBZone Program. SBA intended that result, and believes

that the current regulation provides for that result, but is clarifying the regulation to ensure that it is not misconstrued.

Although SBA proposed amendments to § 126.606, the proposal provided that SBA may release a procurement requirement from the 8(a)BD Program only when neither the incumbent nor any other 8(a) Participant can perform the requirement. If no 8(a) Participant is available to perform the requirement and SBA does not ''release'' it and allow it to become available for HUBZone contracting, then the contracting officer can issue the solicitation as a full and open competition. Thus, the logical alternative is ''releasing'' the requirement. Even if the requirement is ''released,'' if it is later offered to the 8(a)BD Program or an 8(a) Participant performs on it, then § 126.605 takes effect and the requirement is no longer available for HUBZone contracting. The regulation protects the 8(a)BD Program, yet provides opportunities for qualified HUBZone SBCs, but only if an 8(a) Participant is unavailable to perform the requirement.

SBA received over 900 comments on proposed § 126.607, which sought to clarify the interaction between the HUBZone and 8(a)BD Programs. The proposed rule provided for parity between the two programs by requiring a CO look first to the HUBZone and 8(a)BD Programs in determining how to fulfill a particular procurement requirement. In deciding which contracting vehicle to use, the proposed rule required a CO to consider the contracting activity's progress in fulfilling its HUBZone and 8(a) goals, as well as other pertinent factors. The proposed rule directed the CO to exercise his/her discretion on whether to offer the requirement to the 8(a)BD or HUBZone Program.

SBA received 235 comments stating, generally, that the proposed rule will reduce the number of contracts available to companies in the 8(a)BD Program and will hinder entrepreneurship in minority communities. Several commenters were concerned with the proposed rule because the 8(a)BD Program does not have statutory goals like the HUBZone Program. The commenters believe that adopting this rule will be harmful to the interests of businesses owned by socially and economically disadvantaged individuals.

SBA received 732 comments in support of the proposed rule. Commenters believed that parity is consistent with the HUBZone and 8(a) statutes and that it is the only fair position. One commenter noted that this will help the Native American community. Other commenters noted that without parity the HUBZone Program cannot be effective. SBA received some comments suggesting that SBA retain the parity rule, but does not allow goaling to be the basis of determination for a CO. Some commenters believed the ''other factors'' criteria would allow COs to act arbitrarily, while others supported the requirement.

As a result of the numerous comments received, SBA has decided to further examine the issues raised by the commentators and will not amend the rule at this time.

SBA received two comments supporting the proposal to allow HUBZone opportunities at or below the simplified acquisition threshold because it would create more opportunities for HUBZone SBCs. SBA notes that the proposed regulation merely clarified § 126.608 by allowing HUBZone contract opportunities ''at or below'' the simplified acquisition threshold, as opposed to just below the simplified acquisition threshold. This final regulation implements the rule as proposed.

SBA received two comments recommending that the Agency expand sole-source-contracting opportunities for HUBZone SBCs, arguing that such contracting opportunities should be the same as for the 8(a)BD Program in order to achieve parity between two programs. SBA notes that the requirements for sole source contracting opportunities for HUBZone SBCs are set forth in the Small Business Act, and SBA therefore cannot expand those opportunities beyond the statute's limits. This final regulation implements the rule as proposed.

In the proposed rule, SBA amended § 126.613 to conform to the recent statutory amendments made by the Reauthorization Act, which addressed calculating the price evaluation preference for purchases by the Secretary of Agriculture of agricultural commodities. In addition, SBA proposed to add more examples to § 126.613, regarding the price evaluation preference for a qualified HUBZone SBC in full and open competition and to clarify that only qualified HUBZone SBCs should benefit from the preference. SBA also proposed amending the current example by correcting a mathematical error.

SBA received three comments on this proposed section. One commenter stated that contracting officers are skirting the use of the price evaluation preference by using an ''up-front'' budget ceiling to eliminate any offer from consideration that exceeds a specific dollar amount. Two commenters stated that the adoption of the price evaluation preference/best value clarification language was long overdue. Further, two commenters believed that the examples were incorrect.

SBA has reviewed the comments and the proposed regulation and has concluded that the examples are correct. With respect to the ''up-front'' budget ceiling, SBA notes that procuring activities may have to abide by certain statutory fiscal limitations. However, in a similar vein, SBA notes that if there is no statutory limit, an agency can not reject, as unreasonably high, a bid which was low by virtue of the application of the HUBZone price evaluation preference in order to make award to a higher evaluated, but lower actual price bidder. The U.S. General Accounting Office confirmed SBA's position (*see AMI Construction,* B–286351, Dec. 27, 2000, at *http://www.gao.gov*), noting that if a procuring activity could reject a HUBZone SBC's bid as unreasonably high, and yet with the application of the price evaluation preference the bid is the low bid in an Invitation for Bids, then the purpose of the evaluation preference in 15 U.S.C. 657a(b)(3) would be thwarted.

SBA received several comments on its proposal to amend § 126.616 and allow for joint ventures comprised of only qualified HUBZone SBCs. Several commenters stated that this amendment will limit the opportunities available for HUBZone SBCs, it is not necessary as limits to joint ventures already exist in § 126.616(b)(1) and (2) (relating to size), and any joint venture limitation should be the same as for the 8(a)BD Program. One commenter supported the proposed regulation, stating that it will protect the HUBZone Program from becoming a tool for unqualified firms to use a ''front'' to get HUBZone benefits.

SBA believes that allowing HUBZone contracts to go to qualified HUBZone SBCs that joint venture with a non-HUBZone SBC will dilute the benefits intended to go to the HUBZone area and residents. Therefore, SBA has implemented this final rule as proposed.

SBA stated in the preamble to the proposed rule that it was considering a new paragraph to § 126.700, which would add an additional contract performance requirement for construction HUBZone contracts. Specifically, in the case of HUBZone construction contracts (either general construction or specialty trade construction), SBA considered requiring qualified HUBZone SBCs to perform at least 50% of the contract, either at the

prime or subcontracting level. Such a provision would not affect the prime performance of work requirements set forth in § 125.6 (*i.e.,* 15% for general construction and 25% for specialty trade construction); rather, it would be a new overall performance of work requirement for HUBZone construction contracts. Thus, for general construction, if a prime contractor will perform 15% of the contract, it would be required to subcontract at least 35% of the contract to one or more other qualified HUBZone SBCs. For a specialty trade construction contract, if a prime contractor will perform 25% of the contract, it would be required to subcontract at least 25% of the contract to one or more other qualified HUBZone SBCs.

In addition, SBA also stated that it was considering several alternatives that would attempt to encourage increased performance by qualified HUBZone SBCs, but that would not adversely affect the HUBZone Program. One alternative that SBA considered is requiring that HUBZone SBCs perform at least 50% of a construction contract through prime or subcontracting arrangements, but allowing the CO to waive this requirement where he or she believes it cannot be met for a particular procurement. Where a CO believed that the 50% requirement could be met, it would continue to apply. Where a CO waived the 50% requirement, the solicitation would have to specify that the 50% requirement does not apply to the HUBZone procurement. The 15% or 25% prime contractor performance of work requirement would continue to apply. As another alternative, SBA considered imposing an evaluation factor in the award of negotiated HUBZone set-asides relating to overall performance by qualified HUBZone SBCs. SBA specifically requested comments on these proposals, including whether the 50% requirement is one that could be met by the affected concerns, and whether and to what extent an evaluation factor could be used to make the requirement acceptable to COs and the procurement community.

SBA received three comments in support of the idea, in general, to add a contract performance requirement for construction HUBZone contracts. Commenters believed it would further the job creation goal of the program and reduce the chances of abusing the benefits offered by the program by allowing non-HUBZone SBCs to perform the majority of the work. In addition, commenters believed it was consistent with the overall goal that 50% of contract costs be expended in HUBZones.

After review of the comments, SBA believes that an additional contract performance requirement for construction contracts is necessary because the HUBZone Program is intended to stimulate historically underutilized business zones through job creation and capital investment. Where a qualified HUBZone SBC is able to subcontract up to 85% of a general construction contract or up to 75% of a specialty trade construction contract to non-HUBZone SBCs (which may be large businesses), SBA is concerned that it would not be meeting the underlying Congressional purpose of the program. At the same time, however, SBA does not want to impose a barrier that could dissuade COs from using the HUBZone Program. Therefore, the final regulation at § 126.700 requires qualified HUBZone SBCs to perform at least 50% of the contract either at the prime or subcontracting level. In addition, the regulation will allow the CO to waive the requirement where he or she determines that it can not be met by at least two qualified HUBZone SBCs.

SBA proposed amending § 126.801 to clarify that SBA does not review protest issues concerning the conduct or administration of a HUBZone contract. One commenter noted a typo in the proposed regulation—the word ''not'' was missing. SBA concurs and has amended the regulation accordingly. In addition, SBA has made a technical amendment clarifying that for sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening, or if the price evaluation preference was not applied at the time of bid opening, by close of business on the fifth business day from the date of identification of the apparent successful offeror.

Application of the Final Rule

As indicated above, this final rule is effective 30 days after the date of publication in the **Federal Register**. To ensure that applicants to and participants in the HUBZone Program are subject to the same requirements, this final rule applies to all HUBZone applications submitted on or after the effective date of this rule, to all pending HUBZone applications, and to all currently certified HUBZone SBCs.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866. SBA prepared an economic impact analysis relating to the rule when it was published as a proposed rule in January. We noted in our analysis that implementing the changes in the rule would provide significant benefits, including (1) Increasing the base number of small businesses in the HUBZone Program and increasing the viability and practicability of using the HUBZone Program by Federal agencies; (2) greater administrative efficiency and program integrity; and (3) greater contracting efficiency for Federal agencies. We did not receive any comments on the economic impact analysis that we published with the proposed rule. We continue to believe that our analysis was accurate.

SBA has determined that this rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35 and has submitted the requirement to OMB for review. Section 126.403(b) requires a HUBZone SBC to submit updated financial information and information relating to the number of its employees. This information is needed to gauge the degree to which the HUBZone Program has resulted in increased employment opportunities and an increased level of investment in HUBZones. SBA received two comments on this request for information. One commenter stated that instead of requiring SBCs to report this information, SBA should verify initial and continued eligibility of HUBZone SBCs as it pertains to employment automatically by cross-referencing employee data with the IRS using the IRS's Form 941 (Employer's Quarterly Federal Tax Return). The commenter recommended SBA implement an automated system connected to the IRS for financial data reporting instead of the proposed request that SBA collect records and data from SBCs.

SBA plans to research this suggestion further. However, SBA believes that if this recommendation can be implemented, it will take time. In the meantime, SBA needs this information as soon as possible in order to effectively gauge the success of the program.

Another commenter stated that this information request should be mandatory so that the resulting data is

reliable. SBA concurs with this comment and agrees that the HUBZone SBC's response to the request for updated financials and employee data should be mandatory.

SBA has certified over ten thousand concerns into the HUBZone Program. Each of these concerns could be subject to this request for information. SBA estimates the burden of this collection of information as follows. SBA requires updated financial information and information relating to the number of employees from a qualified HUBZone SBC annually. SBA estimates that the time needed for a HUBZone SBC to complete this collection will average less than one-half hour. SBA estimates that the cost to complete this collection will be approximately $30 per hour. Thus, the estimated aggregated burden for each qualified HUBZone SBC is 0.5 hours per annum costing an estimated $15 for the year. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. SBA has submitted this information collection package to OMB for review.

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

The Regulatory Flexibility Act (RFA) requires SBA to publish a final analysis. According to the RFA, the analysis must include: a statement of the need for and objective of the rule; a summary of significant issues raised by public comments in response to the IRFA and an assessment of issues and any changes made as a result; a description of and estimate of the number of small entities to which this rule applies; a description of the reporting, recordkeeping and other compliance requirements and an estimate of the classes of small entities subject to the requirements and type of professional skills necessary for the preparation of the report or record; and a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the objectives of applicable statutes and why the agency selected the alternative adopted in the rule.

1. Reason for and Objective of the Rule

The regulations address amendments made to the HUBZone Act by the Reauthorization Act. Specifically, Congress amended the eligibility requirements for SBCs owned by Indian Tribal Governments or tribal corporations, or CDCs. Congress also amended the definition of HUBZone to include ''redesignated areas,'' and added definitions for the terms Indian Reservation and ANC. This regulation addresses those amendments.

The regulation also makes technical amendments, and clarifies existing regulations. Some amendments address certain issues SBA has become aware of while reviewing HUBZone applications.

It is important to remember that the HUBZone Program is a program designed to assist community development through small businesses. SBA's focus in implementing any of its small business programs is always to keep the interests of small businesses in mind. Any regulatory changes made must necessarily consider those interests. The changes made in this final rule are meant to implement new statutory provisions, to make the HUBZone regulations easier to read and understand, to eliminate confusion regarding the intended meaning of several provisions, and to close perceived loopholes that could otherwise open the program to abuse.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and an Assessment of Issues and Any Changes Made as a Result

SBA received two comments on its IRFA. One commenter stated that SBA failed to propose regulatory alternatives that would minimize the impact of this regulation on small firms. This commenter also believed that SBA failed to comply with section 609(a) of the Regulatory Flexibility Act, which requires agencies to assure that small businesses have an opportunity to participate in rulemakings that will considerably impact them.

With respect to the first comment, SBA notes that as the federal agency charged with the responsibility of implementing small business programs to ''further the interests of small business,'' it always attempts to minimize any regulatory impact on small business in its own regulations. In addition, the proposed rule cited several alternatives under consideration for different provisions, and asked for public comment on those alternatives, including ones on subcontracting limitations and ownership by Indian Tribes. With respect to the second comment, SBA notes that it extended the original comment period for the rule because it believed that affected businesses needed more time to adequately respond. 67 FR 8739 (Feb. 26, 2002). In addition, SBA received over 900 comments on the rule. Therefore, SBA believes that SBCs had an opportunity to participate in the rulemaking, and did in fact participate in the process.

Another commenter stated that the IRFA failed to incorporate the complete definition of ''small entities'' in its analysis. According to the Regulatory Flexibility Act (RFA), ''small entities'' are small businesses, ''small organizations'' (non-profits), and small governmental jurisdictions. SBA's programs do not apply to ''small organizations'' or ''small governmental jurisdictions;'' rather, under SBA's size regulations, in order to be considered a small ''business concern,'' a business entity must be organized for profit. In addition, according to the Federal Procurement Data Center (FPDC), Javits Wagner O'Day nonprofit agencies, education, non-profit and Historically Black Colleges and Universities, and state and local governments received over $15 billion in Federal government contracts in fiscal year (FY) 2001. In comparison, according to the same data, HUBZone SBCs received far less—about $700 million. Even though certain provisions of the Reauthorization Act, such as the provisions on Indian Tribes, could increase the pool of SBCs eligible for the program, SBA notes that the majority of these concerns were eligible prior to the Reauthorization Act's amendments. Further, the addition of CDC ownership by the Reauthorization Act may also widen the pool of eligible applicants. Although CDCs can now own a HUBZone SBC and there are more HUBZones as a result of the redesignated areas, concerns still need to have a principal office in a HUBZone. This means that some concerns need to move into a HUBZone, which requires the expenditure of funds before any benefit is received. As a result, SBA believes that the provisions of this rule will not alter the pool of eligible small businesses by a sufficient number to change the procurement strategy of a contracting activity. Therefore, the proposed regulation will not impact ''small organizations'' or ''small jurisdictions.''

One commenter also recommended SBA address how the rule will impact service disabled veterans, women-owned small businesses, SDBs, 8(a) Participants and other programs that are part of the 23% annual procurement goal for SBCs. With respect to this

comment, SBA notes that prior to the enactment of the HUBZone Act, the government-wide goal for small business participation was 20%. When Congress enacted the HUBZone Act, it changed the government-wide contracting goal from 20% to 23% to address participation by qualified HUBZone SBCs. *See* Public Law 105–135, section 603(b)(1)(B). The HUBZone Program was intended to add on to, not subtract from, other small business programs. SBA's programs are not meant to compete against each other. As further evidence that the HUBZone Program is not intended to take away from other programs, the regulations provide that SBA will not consent to releasing a requirement previously performed through the 8(a)BD Program to the HUBZone Program unless neither the incumbent nor any other 8(a)BD participant can perform the requirement.

Further, in FY 2001, the Federal Government spent over $234 billion dollars (*see http://www.fpdc.gov*). SBA believes that all SBCs, no matter which program they participate in, can and should be receiving their fair share of this $234 billion. In addition, SBA notes that the statute and regulations now provide that qualified HUBZone SBCs can be owned by CDCs and one or more SBCs, or Indian Tribes and one or more SBCs. Therefore, SBCs, including SDBs and 8(a) Participants, can participate in the HUBZone Program not only by becoming a qualified HUBZone SBC, but also by acquiring ownership of a qualified HUBZone SBC. Thus, SBA does not believe that this rule will negatively impact other SBCs.

Another comment stated that it was not possible to ascertain from the rule or IRFA the full impact of allowing SBCs owned by ESOPs to be eligible for the program. This commenter believed that the proposed regulation could create a cost/economic burden on SBCs by requiring them to make a major decision to hire or not hire qualified employees that are not United States citizens.

In response to this comment, SBA notes that the requirement for ownership by United States citizens is a statutory requirement. The HUBZone Act, the statute that creates the HUBZone Program, outlines the eligibility requirements for SBCs. It requires 100% ownership by U. S. citizens, ownership in part by Tribes or tribal-entities, or ownership in part by CDCs. SBA has no choice but to implement the statute as written. Any perceived ''burden'' is not one created by SBA's regulations. In addition, SBA notes that it has received only a handful of applications from concerns owned by ESOPs. After reviewing the issue, SBA determined that a concern owned by an ESOP is owned and controlled by the trustee of the ESOP and the employees. Consequently, to meet the eligibility requirements of the statute, the employees participating in the ESOP must be U.S. citizens. With respect to whether or not a concern should hire or not hire an employee, SBA believes those are decisions to be made solely by the concern. The benefits of the program for concerns owned by an ESOP are the same as for all other eligible concerns—the possibility of receiving a HUBZone contract. This ''possibility'' was explained in the proposed rule at § 126.603. Further, according to FPDC data, this ''possibility'' amounted to approximately $700 million in contracts awarded to HUBZone SBCs in FY 2001. Only the concern itself can weigh the benefit of receiving a potential HUBZone contract to the benefit of hiring a certain employee. These are everyday business decisions that are made by all concerns, not just concerns wishing to participate in the HUBZone Program.

This commenter also stated that SBA did not determine the costs associated with keeping an accurate system to insure that all employees of an ESOP are United States citizens or that corporations that are HUBZone SBCs must maintain an accurate system to verify that all stock holders are U.S. citizens. SBA did not discuss these costs because such ''systems'' are required of the business in the normal course of business, and any costs are not costs associated with this rule. Every time a concern hires an employee, the employee must complete a W–2 (IRS) tax form. These forms are maintained by the concern. The tax form provides the information on the citizenship of each employee. With respect to public companies, SBA notes that such companies have always been eligible for the program.

Finally, this commenter stated that SBA did not provide economic impact data on the proposed provisions expanding contract performance requirements for construction HUBZone contracts. In response to this comment, SBA provides the following information.

In FY 2001, the Federal Government spent over $16 billion in construction (*see www.fpdc.gov*). It is not clear how much of that went to HUBZone SBCs, although according to the same data, HUBZone SBCs received between $600 million and $700 million in contracts total. According to SBA's CCR/DSBS (*http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm*), there are 2,021 qualified HUBZone SBCs, which are engaged in construction. The rule requiring qualified HUBZone SBCs to perform at least 50% of the construction contract itself or through a subcontract with other qualified HUBZone SBCs may increase the number of subcontracts issued to such concerns. In addition, this could increase the number of contracts ultimately awarded HUBZone SBCs in this area because more concerns could be gaining experience through subcontracting. Further, because there are over 2,000 qualified HUBZone SBCs in this field, a prime HUBZone SBC should not have a problem subcontracting to another HUBZone SBC to meet this requirement. In the alternative, SBA's final regulation provides that COs may waive this requirement if it can not be met.

3. Description of Reporting, Recordkeeping and Other Compliance Requirements

The RFA requires a description of the reporting, recordkeeping and other compliance requirements and an estimate of the classes of small entities subject to the requirements and type of professional skills necessary for the preparation of the report or record.

The rule authorizes SBA to request that a qualified HUBZone SBC submit updated financial information and information relating to the number of its employees. This information is needed to gauge the degree to which the HUBZone Program has resulted in increased employment opportunities and an increased level of investment in HUBZones. The office manager of a concern should be able to provide this information.

In addition, because SBA has changed this proposal from a voluntary to a mandatory one, at this time the Agency requests comments on the affects implementing this requirement will have on SBCs. Further, in order to provide SBCs with sufficient time to set up a recordkeeping system if necessary (although SBA believes that all of this information is information generally collected and retained by SBCs during the course of business) to meet this requirement, or to understand what this requirement entails, SBA does not plan to request this information in the near future.

4. Minimizing Significant Economic Impact

The RFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the objectives of applicable statutes and

why the agency selected the alternative adopted in the rule. SBA has addressed this in the preamble.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, amend parts 121, 125 and 126 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. Revise the authority citation for 13 CFR part 121 to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), 644(c) and 662(5); Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188; Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; Pub. L. 106–24, 113 Stat. 39.

■ 2. Amend § 121.1001 by revising paragraph (a)(6)(iv), and by adding new paragraph (b)(7) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(6) * * *

(iv) The SBA Associate Administrator for the HUBZone Program, or designee.

* * * * *

(b) * * *

(7) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or qualified HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 3. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

■ 4. In § 125.6, redesignate paragraphs (c), (d), (e), (f), (g), and (h) as paragraphs (e), (f), (g), (h), (i), and (j) respectively, and add new paragraphs (c) and (d) to read as follows

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(c) A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract (as defined in § 126.600 of this chapter) provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50% of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15% of the cost of contract performance incurred for personnel on the concern's employees;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25% of the cost of contract performance incurred for personnel on the concern's employees;

(4) In the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the qualified HUBZone SBC spends at least 50% of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement; and

(5) In the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, the qualified HUBZone SBC may not purchase the commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(d) SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry codes in the North American Industry Classification System (NAICS) pursuant to the following procedures.

(1) *Format of request.* Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Associate Administrator of the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the Federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDB, woman-owned business, or HUBZone programs.

(2) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the **Federal Register** a notice of its receipt of a request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) *Comments.* SBA will provide a period of not less than 30 days for public comment in response to the **Federal Register** notice.

(4) *Decision.* SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the **Federal Register**. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

* * * * *

PART—126 HUBZONE PROGRAM

■ 5. The authority citation for 13 CFR part 126 is revised to read as follows:

Authority: 15 U.S.C. 632, and 15 U.S.C. 657a.

■ 6–7. Amend § 126.101 by revising paragraph (a) to read as set forth below, removing paragraph (b), and redesignating current paragraph (c) as paragraph (b).

§ 126.101 Which government departments or agencies are affected directly by the HUBZone Program?

(a) The HUBZone Program applies to all federal departments or agencies that employ one or more contracting officers.

* * * * *

■ 8. Amend § 126.103 as follows:

A. Remove the definitions for ''AA/8(a)BD'', ''HUBZone 8(a) concern,'' and ''Women-owned business (WOB);''

B. Revise the definitions of ''HUBZone,'' ''HUBZone small business concern (HUBZone SBC),'' ''Indian reservation,'' ''Lands within the external boundaries of an Indian reservation,'' ''Person,'' ''Qualified census tract,'' ''Qualified non-metropolitan county,'' and ''Small disadvantaged business;''

C. Add the terms and definitions for ''AA/BD,'' ''ADA/GC&BD,'' ''Agricultural commodity,'' ''ANCSA,'' ''Alaska Native Corporation,'' ''Alaska Native Village,'' ''Attempt to maintain,'' ''Community Development Corporation,'' ''Contracting Officer,'' ''Indian Tribal Government,'' ''Redesignated area,'' and ''Small business concern''.

The revised and added terms read as follows:

§ 126.103 What definitions are important in the HUBZone Program?

* * * * *

AA/BD means SBA's Associate Administrator for the Office of Business Development.

* * * * *

ADA/GC&BD means SBA's Associate Deputy Administrator for Government Contracting and Business Development.

Agricultural commodity has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

Alaska Native Corporation (ANC) has the same meaning as the term ''Native Corporation'' in section 3 of the ANCSA, 43 U.S.C. 1602.

Alaska Native Village has the same meaning as the term ''Native village'' in section 3 of the ANCSA, 43 U.S.C. 1602.

ANCSA means the Alaska Native Claims Settlement Act, as amended.

Attempt to maintain means making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs.

* * * * *

Community Development Corporation (CDC) means a corporation that has received financial assistance under Part 1 of Subchapter A of the Community Economic Development Act of 1981, 42 U.S.C. 9805–9808.

* * * * *

Contracting Officer (CO) has the meaning given that term in 41 U.S.C. 423(f)(5), which defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

* * * * *

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, or redesignated areas.

HUBZone small business concern (HUBZone SBC) means an SBC that is

(1) Owned and controlled by 1 or more persons, each of whom is a United States citizen;

(2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));

(3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));

(4) Wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(5) Owned in part by one or more Indian Tribal Governments or in part by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs; or,

(6) Wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs.

* * * * *

Indian reservation (1) Has the same meaning as the term ''Indian country'' in 18 U.S.C. 1151, except that such term does not include:

(i) Any lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of December 21, 2000, unless that tribe is recognized after that date by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and

(ii) Lands taken into trust or acquired by an Indian tribe after December 21, 2000 if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status as of December 21, 2000; and

(2) In the State of Oklahoma, means lands that:

(i) Are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(ii) Are recognized by the Secretary of the Interior as of December 21, 2000, as eligible for trust land status under 25 CFR part 151.

Indian Tribal Government means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

Lands within the external boundaries of an Indian reservation include all lands within the perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the perimeter of an Indian reservation is ''lands within the external boundaries of an Indian reservation.'' By contrast, an Indian-owned parcel of land that is located outside the perimeter of an Indian reservation is not ''lands within the external boundaries of an Indian reservation.''

* * * * *

Person means a natural person.

Qualified census tract has the meaning given that term in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986.

* * * * *

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986, and in which:

(i) The median household income is less than 80% of the non-metropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

(ii) The unemployment rate is not less than 140% of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

Redesignated area means any census tract or any non-metropolitan county that ceases to be a qualified HUBZone,

except that such census tracts or non-metropolitan counties may be ''redesignated areas'' only for the 3-year period following the date on which the census tract or non-metropolitan county ceased to be so qualified. The date on which the census tract or non-metropolitan county ceases to be qualified is the date that the official government data, which affects the eligibility of the HUBZone, is released to the public.

* * * * *

Small business concern (SBC) means a concern that, with its affiliates, meets the size standard for its primary industry, pursuant to part 121 of this chapter.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this chapter, is owned and controlled by one or more socially and economically disadvantaged individuals, tribes, ANCs, Native Hawaiian Organizations, or CDCs and has been certified pursuant to subpart A or B, part 124 of this chapter.

* * * * *

■ 9. Revise § 126.200 to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) *Concerns owned by Indian Tribal Governments.*—(1) *Ownership.* (i) The concern must be wholly owned by one or more Indian Tribal Governments;

(ii) The concern must be wholly owned by a corporation that is wholly owned by one or more Indian Tribal Governments;

(iii) The concern must be owned in part by one or more Indian Tribal Governments and all other owners are either United States citizens or SBCs; or

(iv) The concern must be owned in part by a corporation, which is wholly owned by one or more Indian Tribal Governments, and all other owners are either United States citizens or SBCs.

(2) *Size.* The concern, with its affiliates, must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) *Employees.* The concern must certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation and that it will ''attempt to maintain'' (*see* § 126.103) that percentage during the performance of the contract. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other.

(b) *Concerns owned by U.S. citizens, ANCs or CDCs*—(1) *Ownership.* (i) The concern must be 100% owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership is owned 99.9% by persons who are U.S. citizens, and 0.1% by someone who is not. The concern is not eligible because it is not 100% owned by U.S. citizens;

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to section 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to section 29(e)(2)) of the ANCSA); or

(iii) The concern must be wholly owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;

(2) *Size.* The concern, together with its affiliates, must qualify as a small business under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(3) *Principal office.* The concern's principal office must be located in a HUBZone.

(4) *Employees.* At least 35% of the concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number;

Example 1: A concern has 25 employees, 35% or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

Example 2: A concern has 95 employees, 35% or 33.25 employees must reside in a HUBZone. Thus, 34 employees must reside in a HUBZone.

(5) *Contract Performance.* The concern must represent, as provided in the application, that it will ''attempt to maintain'' (*see* § 126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(6) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

■ 10. Revise § 126.201 to read as follows:

§ 126.201 Who does SBA consider to own a HUBZone SBC?

An owner of a SBC seeking HUBZone certification or a qualified HUBZone SBC is a person who owns any legal or equitable interest in such SBC. If an Employee Stock Option Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner. If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner. In addition:

(a) *Corporations.* SBA considers any person who owns stock, whether voting or non-voting, to be an owner. SBA considers options to purchase stock and the right to convert debentures into voting stock to have been exercised.

Example: U.S. citizens own all of the stock of a corporation. A corporate officer, a non-U.S. citizen, owns no stock in the corporation, but owns options to purchase stock in the corporation. SBA will consider the options exercised and the individual to be an owner. Thus, pursuant to § 126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not 100% owned and controlled by persons who are United States citizens.

(b) *Partnerships.* SBA considers all partners, whether general or limited, to be owners in a partnership.

(c) *Sole proprietorships.* The proprietor is the owner.

(d) *Limited liability companies.* SBA considers each member to be an owner of a limited liability company.

■ 11. Revise § 126.202 to read as follows:

§ 126.202 Who does SBA consider to control a HUBZone SBC?

Control means both the day-to-day management and long-term decision-making authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions: officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

■ 12. Revise § 126.203(b) to read as follows:

§ 126.203 What size standards apply to HUBZone SBCs?

* * * * *

(b) *At time of initial contract offer.* A HUBZone SBC must be small for the size standard corresponding to the NAICS code assigned to the contract.

■ 13. Revise § 126.205 to read as follows:

§ 126.205 May participants in other SBA programs be certified as qualified HUBZone SBCs?

Participants in other SBA programs may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in this part. Participation in other SBA Programs is not a requirement for participation in the HUBZone Program.

■ 14. Revise § 126.207 to read as follows:

§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?

A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to be certified as a qualified HUBZone SBC and if required by § 126.200, the concern's principal office must be located in a HUBZone.

■ 15. Revise § 126.300 to read as follows:

§ 126.300 How may a concern be certified as a qualified HUBZone SBC and what information will SBA consider?

A concern must apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where a concern fails to cooperate with SBA or submit information requested by SBA. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

■ 16. Revise § 126.303 to read as follows:

§ 126.303 Where must a concern submit its application and certification?

A concern seeking certification as a HUBZone SBC must submit either an electronic application to SBA via *https://eweb1.sba.gov/hubzone/internet/* or a written application to the AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Certification pages must be validated electronically or signed by a person authorized to represent the concern.

■ 17. Revise § 126.304 to read as follows:

§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must submit a completed application and represent to SBA that it meets the requirements set forth in § 126.200. After submitting the application, applicants must notify SBA of any material changes that could affect its eligibility. The concern must also submit any additional information required by SBA.

(b) Concerns applying for HUBZone status based on a location within the external boundaries of an Indian reservation must use SBA's maps (located at *https://eweb1.sba.gov/hubzone/internet/*) to verify that the location is within the external boundaries of an Indian reservation. If, however, SBA's maps indicate that the location is not within the external boundaries of an Indian reservation and the concern disagrees, then the concern must submit official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5.

(c) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 126.501, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

■ 18. Revise § 126.306(b) to read as follows:

§ 126.306 How will SBA process the certification?

* * * * *

(b) SBA may request additional information or clarification of information contained in an application submission at any time.

* * * * *

■ 19. Revise § 126.307 to read as follows:

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

Qualified HUBZone SBCs are identified by running a search on CCR/DSBS *(http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm)* and are listed on the HUBZone Web page at *https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm.* In addition, requesters may obtain a copy of the List by writing to the AA/HUB at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at *hubzone@sba.gov.*

■ 20. Revise § 126.308 to read as follows:

§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter, should immediately notify the AA/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or via e-mail at *hubzone@sba.gov.* The concern must appear on the List to be eligible for HUBZone contracts.

■ 21. Revise § 126.309 to read as follows:

§ 126.309 May a declined or decertified concern seek certification at a later date?

A concern that SBA has declined or decertified may seek certification no sooner than one year from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. *See* § 126.304(c).

■ 22. Revise § 126.401 to read as follows:

§ 126.401 What is a program examination and what will SBA examine?

(a) *General.* A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application process or in connection with a HUBZone contract. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a HUBZone contract.

(b) *Scope of review.* Examiners may conduct the review, or parts of the review, at one or all of the concern's offices. SBA will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the location and ownership of the concern, the employee percentage requirements, and the concern's ''attempt to maintain'' (*see* § 126.103) this percentage. The concern must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission of the application and any recertifications issued to SBA.

■ 23. Revise § 126.402 to read as follows:

§ 126.402 When may SBA conduct program examinations?

SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is certified as a qualified HUBZone SBC.

■ 24. Revise § 126.403 to read as follows:

§ 126.403 May SBA require additional information from a HUBZone SBC?

(a) At the discretion of the AA/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. SBA may draw an adverse inference from the failure of a HUBZone SBC to cooperate with a program examination or provide requested information.

(b) In order to gauge the success of the program, SBA requires that a HUBZone SBC submit updated financial information and information relating to the number of its employees.

§ 126.404 [Removed]

■ 25. Remove § 126.404.

§ 126.405 [Removed]

■ 26. Remove § 126.405.

■ 27. Revise § 126.500 to read as follows:

§ 126.500 How does a qualified HUBZone SBC maintain HUBZone certification?

Any qualified HUBZone SBC seeking to remain on the List must recertify every three years to SBA that it remains a qualified HUBZone SBC (*See* § 126.501 for ongoing obligations). Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days after the third anniversary of their date of certification and each subsequent three-year period. Failure to do so will result in SBA initiating decertification proceedings. Once decertified, the concern then would have to submit a new application for certification pursuant to § 126.309. The recertification to SBA must be in writing and must represent that the circumstances relative to eligibility that existed on the date of certification showing on the List have not materially changed and that the concern meets any new eligibility requirements.

■ 28. Revise § 126.501 to read as follows:

§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

A qualified HUBZone SBC must immediately notify SBA of any material change that could affect its eligibility. Material change includes, but is not limited to, a change in the ownership, business structure, or principal office of the concern, or a failure to meet the 35% HUBZone residency requirement (*See* § 126.200 for certain eligibility requirements). The notification must be in writing, and must be sent or delivered to the AA/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change may result in decertification and removal from the List pursuant to § 126.504. In addition, SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, it must apply for certification pursuant to §§ 126.300 through 126.306.

§ 126.503 [Redesignated as § 126.504]

■ 29. Redesignate current § 126.503 as § 126.504.

■ 30. Add new § 126.503 to read as follows:

§ 126.503 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility or determines that the concern is no longer eligible for the program?

If SBA is unable to verify a qualified HUBZone SBC's eligibility or determines it is not eligible for the program, SBA may propose decertification of the concern.

(a) *Proposing Decertification.* Except as set forth in paragraph (c) of this section, the Deputy AA/HUB or designee will first notify the qualified HUBZone SBC in writing that SBA is proposing to decertify it, the reasons for the proposed de-certification, and that the SBC must rebut each of the reasons SBA sets forth. The qualified HUBZone SBC will have 30 calendar days from the date that it receives SBA's notification to respond, in writing, to the AA/HUB or designee.

(b) *SBA's Decision.* The AA/HUB or designee will consider the reasons for proposed decertification and the qualified HUBZone SBC's response before making a written decision whether to decertify. The AA/HUB may draw an adverse inference where a qualified HUBZone SBC fails to cooperate with SBA or provide the information requested. The AA/HUB's decision is the final agency decision.

(c) *Decertifying Pursuant to a Protest.* SBA may decertify a qualified HUBZone SBC and remove its name from the List without first proposing it for decertification if the AA/HUB upholds a protest pursuant to § 126.803 and the AA/HUB's decision is not overturned pursuant to § 126.805.

■ 31. Revise § 126.601 to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) In order to submit an offer on a specific HUBZone contract, the qualified HUBZone SBC, together with its affiliates, must be small under the size standard corresponding to the NAICS code assigned to the contract.

(b) A firm must be a qualified HUBZone SBC both at the time of its initial offer and at the time of award in order to be eligible for a HUBZone contract.

(c) At the time a qualified HUBZone SBC submits its initial offer, and where applicable its final offer, on a specific HUBZone contract, it must certify to the CO that:

(1) It is a qualified HUBZone SBC that appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List that could affect its HUBZone eligibility;

(3) It is small under the NAICS code assigned to the procurement; and

(4) If the qualified HUBZone SBC was certified pursuant to § 126.200(b), it must represent that it will ''attempt to maintain'' (*See* § 126.103) the required percentage of employees who are HUBZone residents during the performance of a HUBZone contract. If the qualified HUBZone SBC was certified pursuant to § 126.200(a), then it must represent that at least 35% of its employees engaged in performing the HUBZone contract reside within any Indian reservation governed by one or more of its Indian Tribal Government owners or reside within any HUBZone adjoining any such Indian reservation.

(d) If submitting an offer as a joint venture, each qualified HUBZone SBC must make the certifications in paragraph (c) of this section separately under its own name.

(e) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406(b)(1) of this chapter, and if the small manufacturer providing the end item for the contact is also a qualified HUBZone SBC.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(i) SBA will not issue contract-specific waivers as it does for small business set-aside and 8(a) contracts under § 121.406(b)(3)(i) of this chapter.

(ii) Class waivers issued under § 121.406(b)(3)(ii) of this chapter do not apply to HUBZone contracts.

(2) For HUBZone contracts at or below $25,000 in total value, a qualified

HUBZone SBC may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

■ 32. Revise § 126.602 to read as follows:

§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must ''attempt to maintain'' (*See* § 126.103) the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of its HUBZone status. Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(a) must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

■ 33. Amend § 126.603 to read as follows:

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

HUBZone certification does not guarantee that a qualified HUBZone SBC will receive HUBZone contracts. Qualified HUBZone SBCs should market their capabilities to appropriate contracting activities in order to increase the prospect that the contracting activity will adopt an acquisition strategy that includes HUBZone contract opportunities.

■ 34. Amend § 126.605 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 126.605 What requirements are not available for HUBZone contracts?

* * * * *

(b) An 8(a) participant currently is performing the requirement through the 8(a)BD program or SBA has accepted the requirement for award through the 8(a)BD program, unless SBA has consented to release the requirement from the 8(a)BD program.

■ 35. Revise § 126.606 to read as follows:

§ 126.606 May a CO request that SBA release a requirement from the 8(a)BD program for award as a HUBZone contract?

A CO may request that SBA release an 8(a) requirement for award as a HUBZone contract. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant can perform the requirement. The request must be made to the AA/BD, who will make a determination after consulting with the AA/HUB.

■ 36. Revise § 126.608 to read as follows:

§ 126.608 Are there HUBZone contract opportunities at or below the simplified acquisition threshold or micropurchase threshold?

A CO may make a requirement available as a HUBZone set-aside if it is at or below the simplified acquisition threshold. In addition, a CO may award a requirement as a HUBZone contract to a qualified HUBZone SBC at or below the micropurchase threshold.

■ 37. Revise § 126.610 to read as follows:

§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

(a) The Administrator may appeal a CO's decision not to make a particular requirement available for award as a HUBZone contract to the Secretary of the department or head of the agency.

(b) An appeal is initiated by SBA's Procurement Center Representative to the CO, and may be in response to information supplied by the AA/HUB, his or her designee, or other interested parties.

■ 38. Revise § 126.611(c) to read as follows:

§ 126.611 What is the process for such an appeal?

* * * * *

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

* * * * *

■ 39. Revise § 126.612 section heading and paragraphs (b)(1), (b)(2), and (e) to read as follows:

§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?

* * * * *

(b) * * *

(1) $5,000,000 for a requirement within the NAICS codes for manufacturing; or

(2) $3,000,000 for a requirement within all other NAICS codes;

* * * * *

(e) In the estimation of the CO, contract award can be made at a fair and reasonable price.

■ 40. Revise § 126.613 to read as follows:

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

(a)(1) Where a CO will award a contract on the basis of full and open competition, the CO must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another SBC) if the price offered by the qualified HUBZone SBC is not more than 10% higher than the price offered by the otherwise lowest, responsive, and responsible offeror. For a best value procurement, the CO must apply the 10% preference to the otherwise successful offer of a large business and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation.

(2) Where, after considering the price evaluation adjustment, the price offered by a qualified HUBZone SBC is equal to the price offered by a large business (or, in a best value procurement, the total evaluation points received by a qualified HUBZone SBC is equal to the total evaluation points received by a large business), award shall be made to the qualified HUBZone SBC.

Example 1: In a full and open competition, a qualified HUBZone SBC submits an offer of $98, a non-HUBZone SBC submits an offer of $95, and a large business submits an offer of $93. The lowest, responsive, responsible offeror would be the large business. However, the CO must apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is not more than 10% higher than the large business' offer and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror.

Example 2: In a full and open competition, a qualified HUBZone SBC submits an offer of $103, a non-HUBZone SBC submits an offer of $100, and a large business submits an offer of $93. The lowest, responsive, responsible offeror would be from the large business. The CO must then apply the HUBZone price evaluation preference. In this example, the qualified HUBZone SBC's offer is more than 10% higher than the large business' offer and, consequently, the qualified HUBZone SBC does not displace the large business as the lowest, responsive, and responsible offeror. In addition, the non-HUBZone SBC's offer at $100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone SBC.

Example 3: In a full and open competition, a qualified HUBZone SBC submits an offer of $98 and a non-HUBZone SBC submits an offer of $93. The CO would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a SBC.

(b)(1) For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be:

(i) 10%, for the portion of a contract to be awarded that is not greater than 25% of the total volume being procured for each commodity in a single invitation for bids (IFB);

(ii) 5%, for the portion of a contract to be awarded that is greater than 25%, but not greater than 40%, of the total volume being procured for each commodity in a single IFB; and

(iii) Zero, for the portion of a contract to be awarded that is greater than 40% of the total volume being procured for each commodity in a single IFB.

(2) The 10% and 5% price evaluation preferences for agricultural commodities apply to all offers from qualified HUBZone SBCs up to the 25% and 40% volume limits specified in paragraph (b)(1) of this section. As such, more than one qualified HUBZone SBC may receive a price evaluation preference for any given commodity in a single IFB.

Example: There is an IFB for 100,000 pounds of wheat. Bid 1 (from a large business) is $1/pound for 100,000 pounds of wheat. Bid 2 (from a HUBZone SBC) is $1.05/pound for 20,000 pounds of wheat. Bid 3 (from a HUBZone SBC) is $1.04/pound for 20,000 pounds. Bid 3 receives a 10% price evaluation adjustment for 20,000 pounds, since 20,000 is less than 25% of 100,000 pounds. With the 10% price evaluation adjustment, Bid 1 changes from $20,000 for the first 20,000 pounds to $22,000. Bid 3's price of $20,800 ($1.04 × 20,000) is now lower than any other bid for 20,000 pounds. Thus, Bid 3 will be accepted for the full 20,000 pounds. Bid 2 receives a 10% price evaluation adjustment for that amount of its bid when added to the volume in Bid 3 that does not exceed 25% of the total volume being procured. Since 25,000 pounds is 25% of the total volume of wheat under the IFB, and Bid 3 totaled 20,000 pounds, a 10% price evaluation adjustment will be applied to the first 5,000 pounds of Bid 2. With the price evaluation adjustment, the price for Bid 1, as measured against Bid 2, for 5,000 pounds changes from $5,000 to $5,500. Bid 2's price of $5,250 ($1.05 × 5,000) is lower than Bid 1 for 5,000 pounds. Bid 2 will then receive a 5% price evaluation adjustment for the remaining 15,000 pounds, since the total volume of Bids 3 and 2 receiving an adjustment does not exceed 40% of the total volume of wheat under the IFB (*i.e.*, 40,000 pounds). With the 5% price evaluation adjustment, Bid 1's price for the next 15,000 pounds changes from $15,000 to $15,750. Bid 2's price for that 15,000 pounds is also $15,750 ($1.05 × 15,000). Because the evaluation price for Bid 2 is *not more than* 10% higher than the price offered by Bid 1, Bid 2's price is deemed to be lower than the price offered by Bid 1. Since the evaluation price for both the first 5,000 pounds (receiving a 10% price evaluation adjustment) and the remaining 15,000 pounds (receiving a 5% price evaluation adjustment) is less than Bid 1, Bid 2 will be accepted for the full 20,000 pounds.

(c) A contract awarded to a qualified HUBZone SBC under a preference described in paragraph (b) of this section shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to SBCs.

■ 41. Revise § 126.614 to read as follows:

§ 126.614 How does a CO apply HUBZone and SDB price evaluation preferences in full and open competition?

A CO may receive offers from both qualified HUBZone SBCs and SDB concerns, or from concerns that qualify as both, during a full and open competition. The CO must first apply the SDB price evaluation preference described in 10 U.S.C. 2323 to all appropriate offerors. The CO must then apply the HUBZone price evaluation preference as described in § 126.613 to all appropriate offerors. A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.613 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103–355, in a full and open competition.

Example 1: In a full and open competition, a qualified HUBZone SBC (but not an SDB) submits an offer of $102; an SDB (but not a qualified HUBZone SBC) submits an offer of $107; and a large business submits an offer of $93. The CO first applies the SDB price evaluation preference and adds 10% to the qualified HUBZone SBC's offer thereby making that offer $112.2, and to the large business's offer thereby making that offer $102.3. As a result, the large business is the lowest, responsive, and responsible offeror. Next, the CO applies the HUBZone preference and, since the qualified HUBZone SBC's offer is not more than 10% higher than the large business's offer, the CO must deem the price offered by the qualified HUBZone SBC to be lower than the price offered by the large business.

Example 2: A qualified HUBZone SBC (but not an SDB) submits an offer of $102; a qualified HUBZone SBC that is also an SDB submits an offer of $105; an SDB (but not a qualified HUBZone SBC) submits an offer of $107; a small business concern (but not a qualified HUBZone SBC or an SDB) submits an offer of $100; and a large business submits an offer of $93. The CO must first apply the SDB price evaluation preference to establish the lowest, responsive, and responsible offeror. Thus, the qualified HUBZone SBC's offer becomes $112.2; the qualified HUBZone SBC/SDB's offer remains $105; the SDB's offer remains $107; the small business concern's offer becomes $110; and the large business's offer becomes $102.3. As a result of the SDB price evaluation preference, the large business is the lowest, responsive, and responsible offeror. Next, the CO must apply the HUBZone price evaluation preference and if a qualified HUBZone SBC's price is not more than 10% higher than the large business's price, the CO must deem its price to be lower than the large business's price. In this example, the qualified HUBZone price of $112.2 is not more than 10% higher than the large business's price, however, the qualified HUBZone/SDB's price of $105 is also not more than 10% higher than the large business's price and is lower than the qualified HUBZone SBC's price. Consequently, the CO must deem the price of the qualified HUBZone/SDB as the lowest, responsive, and responsible offeror.

■ 42. Revise § 126.616 to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

A joint venture may submit an offer on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with another qualified HUBZone SBC for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be certified as a qualified HUBZone SBC.

(b) *Size of concerns.* (1) A joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract and the HUBZone joint venture in the aggregate may exceed the size standard provided the procurement meets the following conditions:

(i) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; and

(ii) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(2) For a procurement that does not exceed the applicable dollar amount specified in paragraph (b)(1) of this section, a joint venture of two or more qualified HUBZone SBCs may submit an offer for a HUBZone contract so long as the qualified HUBZone SBCs in the aggregate are small under the size standard corresponding to the NAICS code assigned to the contract.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by 13 CFR 125.6.

■ 43. Add new § 126.617 to Subpart F to read as follows:

§ 126.617 Who decides contract disputes arising between a qualified HUBZone SBC and a contracting activity after the award of a HUBZone contract?

For purposes of the Disputes Clause of a specific HUBZone contract, the contracting activity will decide disputes arising between a qualified HUBZone SBC and the contracting activity.

■ 44. Add new § 126.618 to Subpart F to read as follows:

§ 126.618 How does a HUBZone SBC's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?

(a) Qualified HUBZone SBCs may enter into Mentor-Protégé relationships in connection with other Federal programs, provided that such relationships do not conflict with the underlying HUBZone requirements.

(b) For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small under part 121 of this chapter, SBA will not find affiliation between the applicant or qualified HUBZone SBC and the firm that is its mentor in a Federally-approved mentor-Protégé relationship (including a mentor that is other than small) on the basis of the mentor-Protégé agreement.

(c)(1) A qualified HUBZone SBC that is a prime contractor on a HUBZone contract may team with and subcontract work to its mentor.

(i) The HUBZone SBC must meet the applicable performance of work requirement set forth in § 125.6(b) of this chapter.

(ii) SBA may find affiliation between a prime HUBZone contractor and its mentor subcontractor where the mentor will perform primary and vital requirements of the contract. *See* § 121.103(f)(4) of this chapter.

(2) A qualified HUBZone SBC may not joint venture with its mentor on a HUBZone contract unless the mentor is also a qualified HUBZone SBC.

■ 45. Revise § 126.700 to read as follows:

§ 126.700 What are the performance of work requirements for HUBZone contracts?

(a) A qualified HUBZone SBC receiving a HUBZone contract for general construction must perform at least 50% of the contract either itself, or through subcontracts with other qualified HUBZone SBCs. A contracting officer may waive this requirement for a particular procurement after determining that at least two qualified HUBZone SBCs can not meet the requirement. Where a waiver is granted, the qualified HUBZone SBC must meet the performance of work requirements set forth in § 125.6(b) of this chapter.

(b) A qualified HUBZone SBC receiving a HUBZone contract for specialty construction must perform at least 50% of the contract either itself, or through subcontracts with other qualified HUBZone SBCs. A contracting officer may waive this requirement for a particular procurement after determining that it can not be met. Where a waiver is granted, the qualified HUBZone SBC must meet the performance of work requirements set forth in § 125.6(b) of this chapter.

(c) A prime contractor receiving an award as a qualified HUBZone SBC must meet the performance of work requirements set forth in § 125.6(b) of this chapter.

■ 46. Revise § 126.702 to read as follows:

§ 126.702 How can the subcontracting percentage requirements be changed?

SBA may change the required subcontracting percentage for a specific industry if the Administrator determines that such action is necessary to reflect conventional industry practices among SBCs that are below the numerical size standard for businesses in that industry group. The procedures for requesting changes in subcontracting percentages are set forth in § 125.6 of this chapter.

§ 126.703 [Removed]

■ 47. Remove § 126.703.

■ 48. Revise § 126.800(b) to read as follows:

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

* * * * *

(b) *For all other procurements.* SBA, the CO, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

■ 49. Revise § 126.801(a), (d)(1), (d)(2), and (e), redesignate current paragraph (d)(3) as (d)(4) and add new paragraph (d)(3), to read as follows:

§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process protests concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does not review issues concerning the administration of a HUBZone contract.

* * * * *

(d) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions:

(i) An interested party must submit its protest by close of business on the fifth business day after bid opening, or

(ii) If the price evaluation preference was not applied at the time of bid opening, by close of business on the fifth business day from the date of identification of the apparent successful offeror.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.

* * * * *

(e) *Referral to SBA.* The CO must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The CO must send the protests, along with a referral letter, to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The CO's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the CO; the type of HUBZone contract at issue; if the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference; if the procurement was a HUBZone set-aside, whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; and whether a contract has been awarded.

■ 50. Revise § 126.803(d) to read as follows:

§ 126.803 How will SBA process a HUBZone status protest?

* * * * *

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&BD, pursuant to § 126.805. If SBA upholds the protest, SBA will decertify the concern.

■ 51. Revise paragraphs § 126.805(a), (b), and (h) to read as follows:

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the CO may file appeals of protest determinations with the ADA/GC&BD.

(b) *Timeliness of appeal.* The ADA/GC&BD must receive the appeal no later than five business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

* * * * *

(h) *Decision.* The ADA/GC&BD will make a decision within five business days of receipt of the appeal, if practicable, and will base his or her decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the CO, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&BD's decision is the final agency decision.

■ 52. Revise paragraph § 126.900(b) to read as follows:

§ 126.900 What penalties may be imposed under this part?

* * * * *

(b) *Civil penalties.* Persons or concerns are subject to civil penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

Dated: May 14, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–11579 Filed 5–21–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0276]

RIN 0910–AC40

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) published an interim final rule in the **Federal Register** of October 10, 2003 (68 FR 58894). The interim final rule requires domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States, to register with FDA by December 12, 2003. Due to several errors in §§ 1.231 and 1.232 (21 CFR 1.231 and 1.232), the interim final rule contains some incorrect information. This document corrects those errors.

DATES: Effective May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa S. Scales, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1720.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 2003 (68 FR 58894), FDA published an interim final rule on Registration of Food Facilities under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Since that time, FDA has discovered that the interim final rule contains several errors.

First, FDA is correcting the phone number to which registration form requests and other technical questions should be directed. The appropriate phone numbers are 1–800–216–7331 or 301–575–0156.

Second, § 1.232 of the interim final rule contains several editorial errors. Section 1.232(d) currently states that each foreign facility must submit ''the name, address, phone number, and emergency contact phone number of its U.S. agent (if there is no other emergency contact designated under § 1.233(c)).'' To improve the clarity of this provision, FDA is also revising § 1.232(d). The reference to § 1.233(c) in this sentence is incorrect; the proper reference is to § 1.233(e). Also, the reference in § 1.232(g) to § 1.233(e) is incorrect; the proper reference is to § 1.233(j).

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Section 1.231 is amended by revising paragraph (b)(1) to read as follows:

§ 1.231 How and where do you register?

* * * * *

(b) * * *

(1) You must register using Form 3537. You may obtain a copy of this form by writing to the U.S. Food and Drug Administration (HFS–681), 5600 Fishers Lane, Rockville, MD 20857 or by requesting a copy of this form by phone at 1–800–216–7331 or 301–575–0156.

* * * * *

■ 3. Section 1.232 is amended by revising paragraphs (d) and (g) to read as follows:

§ 1.232 What information is required in the registration?

* * * * *

(d) For a foreign facility, the name, address, phone number, and, if no emergency contact is designated under § 1.233(e), the emergency contact phone number of the foreign facility's U.S. agent;

* * * * *

(g) Applicable food product categories as identified in § 170.3 of this chapter, unless you check either ''most/all human food product categories,'' according to § 1.233(j), or ''none of the above mandatory categories'' because your facility manufactures/processes, packs, or holds a food that is not identified in § 170.3 of this chapter;

* * * * *

Dated: May 10, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11598 Filed 5–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 1999F–0719]

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

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to allow for the safe use of olestra as a replacement for fats and oils in prepackaged, unpopped popcorn kernels that are ready-to-heat. This action is in response to a food additive petition (FAP) filed by the Procter and Gamble Co.

DATES: This rule is effective May 24, 2004; submit written or electronic objections and requests for a hearing by June 23, 2004. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 172.867 (21 CFR 172.867) as of May 24, 2004.

ADDRESSES: Submit written objections to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Submit electronic objections to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Jason K. Dietz, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3299.

SUPPLEMENTARY INFORMATION:

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I. Subject of Petition

In a notice published in the **Federal Register** of April 6, 1999 (64 FR 16742), FDA announced that an FAP (FAP 9A4652) was filed by the Procter & Gamble Co., 6071 Center Hill Ave., Cincinnati, OH 45224 (P&G, the petitioner) proposing that the food additive regulations be amended in § 172.867 *Olestra* to provide for the safe use of olestra in place of fats and oils in prepackaged, unpopped popcorn kernels that are ready-to-heat. In this document, such prepackaged popcorn kernels will be referred to as ''microwave popcorn.''[1]

Although not noted in the FAP (64 FR 16742), the petitioner also requested two editorial changes in the regulation that would have no effect on the substance of the regulation. Because the identity and specifications for olestra are now listed in the *Food Chemicals Codex* (FCC), the petitioner requested that the regulation incorporate by reference the specifications for olestra provided in the FCC, consistent with other regulations. The petitioner also requested that FDA update § 172.867(f) because it is ''out-of-date.'' Section 172.867(f) requires FDA to hold a Food Advisory Committee (FAC) meeting on olestra within 30 months of olestra's January 30, 1996, approval.

II. Background

In the **Federal Register** of January 30, 1996 (61 FR 3118, ''the 1996 final rule''), FDA announced the approval of olestra for use as a replacement for fats and oils in prepackaged ready-to-eat savory (i.e., salty or piquant but not sweet) snacks (§ 172.867). As part of the 1996 final rule, FDA concluded that olestra inhibits the absorption of the fat-soluble components of the diet when these components are present in the gastrointestinal (GI) tract simultaneously with olestra (61 FR 3118 at 3132 to 3147). Such components include the fat-soluble vitamins A, D, E, and K. Based on data from nutritional studies conducted prior to the 1996 approval, FDA concluded that addition of the four fat-soluble vitamins (A, D, E, and K) to savory snacks containing olestra would compensate for any decreased absorption of these vitamins due to the action of olestra, thus ensuring that consumption of an olestra-containing savory snack would not alter the amount of vitamin available for absorption (61 FR 3118 at 3144 to 3147). As part of its 1996 final rule approving the use of olestra in savory snacks, FDA required that specified amounts of vitamins A, D, E, and K be added to olestra-containing savory snacks (§ 172.867(d)).

The 1996 final rule allowed the use of olestra in savory snacks that are ready-to-eat. Ready-to-eat savory snacks, including olestra-containing ready-to-eat savory snacks and their added fat-soluble vitamins, do not require preparation (i.e., heat treatment) by the consumer prior to consumption. Therefore, in such olestra-containing savory snacks, the levels of added fat-soluble vitamins are unlikely to change between manufacturing and consumption by the consumer. In contrast, the current petition requests approval for a use of olestra in which the olestra-containing savory snack (microwave popcorn), including the added fat-soluble vitamins, must be heated by the consumer prior to consumption.[2] This heat treatment may cause degradation of the added fat-soluble vitamins, resulting in the levels of fat-soluble vitamins present after heat preparation being less than those added by the manufacturer. This is not the case for ready-to-eat savory snacks which are not normally heated by consumers prior to consumption. Therefore, in ruling on this petition, FDA must consider whether heat preparation of olestra-containing microwave popcorn causes any nutritionally important effects in the levels of added fat-soluble vitamins. Additionally, FDA must consider whether any degradation products resulting from the heating of fat-soluble vitamins in olestra-containing microwave popcorn raise any safety concerns.

III. Use of Olestra in Microwave Popcorn

A. Effect on Estimated Consumption of Olestra

The use of olestra as a replacement for fats and oils in microwave popcorn will not change the estimated intake of olestra. In FDA's 1996 decision, FDA calculated the estimated daily intake (EDI) of olestra based on the conservative assumption that all of the fat used in all savory snacks would be replaced by olestra. This approach to calculating the EDI included the assumption that all popcorn, regardless of source, would be made with olestra. Because the agency has already

[1] Two basic types of prepackaged, unpopped popcorn kernels exist in the market: Popcorn kernels in microwavable bags with heat susceptors for heat transfer and popcorn kernels in aluminum foil packages for stovetop heating. Although the petitioned use includes retail products that would be heated on the stovetop as well as those heated in microwave ovens, for simplicity FDA refers to these products as ''microwave popcorn'' throughout this document.

[2] In this case the product purchased by the consumer will be olestra mixed with unpopped popcorn kernels and vitamins A, D, E, and K in a container used to heat the unpopped popcorn kernels. Preparation of the kernels for consumption requires heating the kernels until they pop.

included popcorn consumption from all sources in its estimate of olestra consumption, approval of the current petition would not change the EDI of olestra (Ref. 1).

B. Effect of Microwave Popcorn Preparation on Vitamins A, D, E, and K

As noted, the current petition requests the approval of the use of olestra in a savory snack that will be heated by consumers prior to consumption. Heat treatment may cause degradation of vitamins, including those fat-soluble vitamins that would be added to olestra-containing microwave popcorn. To address this concern, P&G studied the effect of heating on the degradation of fat-soluble vitamins A, D, E, and K.[3] The petitioner chose to use microwave oven heating to study the thermal degradation of fat-soluble vitamins, asserting that: (1) Both stovetop-prepared and microwave oven-prepared products rely on lipids as a heat transfer medium to ''fry'' the kernels in either a foil package on a stovetop or in a bag in a microwave oven, (2) both the stovetop and microwave deliver similar amounts of heat during popcorn preparation, and (3) most consumers prepare popcorn at home in microwave ovens.

FDA agrees that microwave heating of popcorn kernels is adequate to study the degradation of fat-soluble vitamins during heat preparation of both popcorn kernels in microwavable bags with heat susceptors and popcorn kernels in aluminum foil packages intended for stovetop heating (Ref. 1).

1. Temperatures Reached During Popcorn Preparation

As part of its petition, P&G presents data about the temperatures reached during typical microwave heating of popcorn kernels by consumers.[4] P&G demonstrates that the temperature inside bags of microwave popcorn increases from approximately 30 degrees Celsius at the start of heating to a maximum temperature of approximately 175 degrees Celsius. The petitioner reported that exposure to temperatures of 150–175 degrees Celsius occurs for only a fraction (30–60 seconds) of a typical 3.5 minute popping cycle.[5] For comparison, P&G points out that it is not uncommon to fry foods for 2 to 5 minutes at similar temperatures (150–200 degrees Celsius), including foods that serve as dietary sources of fat-soluble vitamins. Thus, fat-soluble vitamins added to microwave popcorn and heated in the home will not experience heating temperatures or times greater than those currently used in common food preparation practices.

2. Degradation of Fat-Soluble Vitamins

To assess the effect of microwave popcorn preparation on fat-soluble vitamin degradation the petitioner analyzed samples from olestra-containing microwave popcorn prepared using a microwave oven. This analysis shows that 44 percent of vitamin A, 4.3 percent of vitamin D, and 24.4 percent of vitamin K are lost during microwave popcorn preparation.[6]

With respect to vitamin E, P&G states that loss of this vitamin was considered during FDA's review of the use of olestra in prepackaged, ready-to-eat savory snacks. Vitamin E loss was reported to be only 3–4 percent (as *a*-tocopherol) under frying conditions (including time and temperature) that exceed those encountered during microwave popcorn preparation.[7] Thus, vitamin E loss resulting from microwave popcorn preparation is unlikely to exceed 3–4 percent.

3. Safety of Fat-Soluble Vitamin Degradation Products

The petitioner considered the safety of degradation products resulting from the heating of fat-soluble vitamins. The petitioner stated that exposure to fat-soluble vitamin degradation products is not a new or unusual dietary experience because the chemical pathways producing fat-soluble vitamin degradation products in microwave popcorn and other heated foods are the same. Degradation products from vitamins A, D, E, and K are a natural consequence of cooking, and these degradation products are commonly eaten. P&G also states that the amount of fat-soluble vitamin degradation products in a serving of microwave popcorn is comparable to the amount found in servings of other fried/heated foods. P&G concludes that the exposure to fat-soluble vitamin degradation products formed during the heating of microwave popcorn does not result in an increased safety risk relative to the exposure to degradation products arising from the frying of other foods commonly found in the diet. P&G states that microwave popcorn would just be another source of such degradation products.

FDA considered that the exposure to fat-soluble vitamin degradation products from this use of olestra would be similar to, or less than, that from other foods fried in oils, or otherwise cooked (Ref. 1). Based on its safety review, FDA concludes that exposure to fat-soluble vitamin degradation products from this use of olestra would be safe (Ref. 2).

4. Nutritional Implications of Fat-Soluble Vitamin Degradation

P&G states that the nutritional impact of fat-soluble vitamin degradation during microwave popcorn preparation can be assessed by examining the likelihood of these losses having a nutritionally significant effect on the overall vitamin status of microwave popcorn consumers. P&G asserts that a nutritionally significant impact on microwave popcorn consumers cannot occur if olestra's potential to interact with dietary sources of fat-soluble vitamins is limited or infrequent. The current petition includes data from the Snack Food Association's 1996 Consumer Snacking Behavior Report. These data demonstrate that microwave popcorn is eaten an average of two eating occasions in 14 days among popcorn eaters and is rarely eaten with meals. (Popcorn is eaten with only about 0.4 percent of all meals.) Microwave popcorn is consumed alone 45 percent of the time and rarely with other foods that are significant sources of fat-soluble vitamins. When other foods are consumed with microwave popcorn, a beverage is the preferred choice (42 percent of popcorn eating occasions). Based on these data, P&G asserts that there is little potential for the use of olestra in microwave popcorn to have an effect on the fat-soluble vitamin status of microwave popcorn consumers. Therefore, the petitioner concluded that the levels of vitamins A, D, E, and K currently required to be

[3] Safety issues associated with the heating of olestra have previously been considered (61 FR 3118 at 3130). The current petition presents no new issues regarding the heating of olestra.

[4] P&G heated bags of microwave popcorn in a 1,000 Watt household microwave oven on high power until the popping frequency slowed to about 2–3 seconds between pops. Popping was usually ''complete'' in about 3.5 minutes. The temperature inside the bag during popping was recorded every 15 seconds by four thermocouples inserted into the bag. After popping, the bags were opened within 30 seconds after completion of popping and the popcorn transferred to a serving bowl, reflective of typical habit and practice for microwave popcorn consumers.

[5] FDA notes that data in the petition show that during typical microwave popcorn preparation temperatures greater than 150 degrees Celsius are achieved for approximately 90 seconds of the 3.5 minute popping cycle (Ref. 2).

[6] FDA notes that the scientific literature shows a vitamin A loss similar to that observed in the study conducted by P&G for microwave popcorn. In particular, vitamin A loss was reported to be 40 percent in meat fried at 200 degrees Celsius for 5 minutes (Refs. 2 and 3).

[7] P&G determined the amount of vitamin E degraded during five deep fries each for 10 minutes at 375 degrees Farenheit (190 degrees Celsius), with wet filter paper and during shallow frying for 14 minutes at 375 degrees Farenheit (190 degrees Celsius), with inclusion of a wet filter paper to simulate heat sink and hydrolysis conditions.

added to olestra-containing savory snacks under § 172.867(d) are sufficient for addition to microwave popcorn.

FDA agrees with the petitioner that the levels of vitamins A, D, E, and K required to be added to microwave popcorn should be those specified in § 172.867(d). FDA reached this conclusion because olestra-containing microwave popcorn is not likely to be consumed concurrently with dietary sources of fat-soluble vitamins. Therefore, it is unlikely that a person's daily intake of fat-soluble vitamins would be affected by the consumption of microwave popcorn that contains olestra. Moreover, the levels of vitamins D and E that are degraded during the heating process amount to such a small quantity (approximately 4 percent) that the systemic levels of these vitamins would not be affected by the small amounts degraded (Ref. 2).

C. Response to Comment

Although section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) establishes no comment period for FAPs, and the agency generally does not solicit comments in notices announcing the filing of an FAP, it is FDA's practice to consider any relevant comments timely submitted. FDA received one comment on the use of olestra in microwave popcorn. The comment and the agency's response follow.

A comment from an individual consumer requested that FDA deny the current petition. The comment expressed concern about the amount of iron added to foods and the potential effects on infants of excess folic acid in their mother's diet. The comment states that the public does not know about the amounts of excess vitamins and iron added to their diets. The comment also requested that FDA allow each individual to add their own vitamins as needed.

The regulation that is the subject of this petition does not require that either iron or folic acid be added to olestra-containing products. Thus, issues surrounding excess levels of these nutrients in the diet are outside the scope of this petition.

D. Conclusions About the Use of Olestra in Microwave Popcorn

Based on a fair evaluation of the data and information in the current FAP, as well as data and information in the original FAP (FAP 7A3997) that resulted in the establishment of § 172.867, FDA has concluded that there is a reasonable certainty that no harm will result from the use of olestra as a replacement for fats and oils in microwave popcorn. FDA is requiring that vitamins A, D, E, and K be added to microwave popcorn at levels specified in § 172.867(d).

IV. Amendment of § 172.867(b) and (c)

In its petition, P&G requested that § 172.867(b), which contains specifications for food-grade olestra, be amended to reference the specifications for food-grade olestra set forth in the FCC, fourth edition, first supplement. P&G observes that the specifications set out in the FCC monograph for olestra are identical to those currently provided in § 172.867(b) (Ref. 1).

In establishing food additive approval regulations, FDA generally incorporates by reference FCC specifications where such specifications have been issued and are consistent with FDA's safety evaluation. As noted, the FCC specifications are the same as those issued by FDA and thus, this change is simply editorial. In addition, manufacturers generally look to the FCC for food grade specifications. Accordingly, FDA agrees that current § 172.867(b) should be amended to remove the current specifications in this paragraph and in their place to incorporate by reference the FCC specifications for food-grade olestra. FDA has concluded that the use of olestra as a replacement for fats and oils in microwave popcorn is safe. Accordingly, the agency is amending § 172.867(c) to include this use of the additive.

V. Deletion of § 172.867(f)

In its petition, P&G also noted that § 172.867(f) is obsolete. In the 1996 final rule, FDA committed to review and evaluate all data and information bearing on the safety of olestra received by the agency after the effective date of the regulation (January 30, 1996) and present such data, information, and evaluation to the agency's Food Advisory Committee (FAC) within 30 months of the approval of olestra (61 FR 3118 at 3168–3169; § 172.867(f)). Consistent with its obligation under § 172.867(f), FDA convened a meeting of its FAC on June 15–17, 1998, fulfilling its obligation under § 172.867(f).[8] Thus, FDA has concluded that § 172.867(f) no longer serves a function and should be deleted.

[8] At an open public meeting, held June 15–17, 1998, new data and information concerning olestra, obtained since the 1996 approval were presented. The complete set of transcripts of the June 15–17, 1998, FAC meeting is publicly available through FDA's Division of Dockets Management and through FDA's Internet site. The Internet site is located at *http://www.fda.gov/ohrms/dockets/ac/cfsan98t.htm#Food Advisory Committee* (choose June 15, 16, and 17).

VI. Summary

FDA has concluded that there is reasonable certainty that no harm will result from the use of olestra in microwave popcorn (21 CFR 170.3(i)). FDA is requiring that vitamins A, D, E, and K be added to microwave popcorn at levels currently specified in § 172.867(d). FDA has also concluded that § 172.867 should be updated by revising § 172.867(b) to incorporate by reference the food-grade specifications for olestra set forth in the FCC, fourth edition, first supplement and by deleting § 172.867(f).

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Inspection of Documents

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (see **ADDRESSES**) by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

X. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Division of Dockets Management and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from M. DiNovi, FDA to M. Ditto, FDA, August 10, 1999.
2. Memorandum from T. P. Twaroski, FDA to M. Ditto, FDA, May 17, 2002.
3. Burger, I. H. and Walters, C. L., ''The Effect of Processing on the Nutritive Value of Flesh Foods,'' *Proceedings of the Nutrition Society*, 32:1–8, 1973.
4. Memorandum from M. DiNovi, FDA to M. Ditto, FDA, May 6, 2002.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.867 is amended by revising paragraphs (b) and (c) and by removing paragraph (f) to read as follows:

§ 172.867 Olestra.

* * * * *

(b) Olestra meets the specifications of the *Food Chemicals Codex*, 4th edition, 1st supplement (1997), pp. 33–35, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418 (Internet address *http://www.nap.edu*). Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) Olestra may be used in place of fats and oils in prepackaged ready-to-eat savory (i.e., salty or piquant but not sweet) snacks and prepackaged, unpopped popcorn kernels that are ready-to-heat. In such foods, the additive may be used in place of fats and oils for frying or baking, in dough conditioners, in sprays, in filling ingredients, or in flavors.

* * * * *

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11502 Filed 5–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD04

Federal Oil Valuation

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule—technical amendment.

SUMMARY: The July 6, 2004, effective date of the final rule originally published May 5, 2004, entitled ''Federal Oil Valuation,'' is changed to August 1, 2004, to correct an inadvertent clerical error.

DATES: The correct effective date of the rule published on May 5, 2004, at 69 FR 24959, is August 1, 2004.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Chief of Staff Denver Office, Minerals Revenue Management, MMS at (303) 231–3211. E-mail: *Sharron.Gebhardt@mms.gov.* Address: P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The MMS published a final rule entitled ''Federal Oil Valuation'' in the **Federal Register** on May 5, 2004 (69 FR 24959). The May 2004 final rule amended the existing regulations governing the valuation of crude oil produced from Federal leases for royalty purposes, and related provisions governing the reporting thereof. The amendments primarily affect which published market prices are most appropriate to value crude oil not sold at arm's length and what transportation deductions should be allowed. The effective date for the May 2004 final rule as originally published is July 6, 2004.

The original intent in publishing the May 2004 final rule was to make the rule become effective on the first day of the calendar month that is more than 60 days following the date of publication in the **Federal Register**. Through an inadvertent clerical error, just prior to publication, the effective date was changed to 60 days following the date of publication in the **Federal Register**. Consequently, the rule was published with an effective date of July 6, 2004. If left unchanged, Federal lessees would have to apply the existing rule to oil produced from July 1 through July 5, 2004, and then apply the May 2004 final rule to oil produced from July 6 to July 31, 2004. It was not MMS's intent to require Federal lessees to value oil produced during a particular production month (in this case, July 2004) using two different valuation rules. The MMS recognizes that to do so would be both administratively burdensome and costly to Federal lessees and MMS. Therefore, MMS is changing the effective date of the May 2004 final rule from July 6, 2004, to August 1, 2004.

This change does not require public comment under 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary for the reasons explained above. Under 5 U.S.C. 553(d), MMS, for good cause, finds that this final rule—technical amendment, should be immediately final upon publication to correct MMS's inadvertent clerical error regarding the May 2004 final rule's effective date.

Dated: May 17, 2004.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 04–11665 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC91

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revision of Requirements Governing Outer Continental Shelf Rights-of-Use and Easement and Pipeline Rights-of-Way

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correcting amendments.

SUMMARY: This document makes a correction to the final rule titled ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revision of Requirements Governing Outer Continental Shelf Rights-of-Use and Easement and Pipeline Rights-of-Way'' that was published December 12, 2003 (68 FR 69308). Incorrect cross-references are changed and the term ''will'' is employed in lieu of ''shall.''

DATES: Effective on May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Regulations and Standards Branch at (703) 787–1604.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction amended 30 CFR 250.160 and 30 CFR 250.1012.

Need for Correction

As published, the final regulations contained two references to 30 CFR 250.1009 (d), although the regulation now is numbered 30 CFR 250.1013. Moreover, § 250.1013 has no application to rights-of-use and easement.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Correction of Publication

■ Accordingly, 30 CFR Part 250 is corrected by making the following correcting amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.160, paragraph (i) is revised to read as follows:

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

* * * * *

(i) *Late payments.* An interest charge will be assessed on unpaid and underpaid amounts from the date the amounts are due, in accordance with the provisions found in 30 CFR 218.54. If you fail to make a payment that is late after written notice from MMS, MMS may initiate cancellation of the right-of-use grant and easement.

■ 3. In § 250.1012, paragraph (e) is revised to read as follows:

§ 250.1012 Required payments for pipeline right-of-way holders.

* * * * *

(e) *Late payments.* An interest charge will be assessed on unpaid and underpaid amounts from the date the amounts are due, in accordance with the provisions found in 30 CFR 218.54. If you fail to make a payment that is late after written notice from MMS, MMS may initiate cancellation of the right-of-use grant and easement under 30 CFR 250.1013.

Dated: May 17, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–11666 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–010]

RIN 1625–AA00

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary, moving safety zone in the navigable waters of San Francisco Bay, California, around a fireworks launch barge used during a fireworks display following a San Francisco Giants Baseball game on Memorial Day weekend. The safety zone is necessary to provide for the safety of mariners in the vicinity of the fireworks barge and for the safety of the vessels, crews, and technicians working the fireworks launch barge and pyrotechnics. Persons and vessels are prohibited from entering into or transiting through the safety zone, unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 10 a.m. to 11:30 p.m. (PDT) on May 29, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 04–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug L. Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the area around the fireworks barge during loading, transit, and the fireworks display to protect the maritime public from the hazards associated with the pyrotechnics and the fireworks display, which are intended for public entertainment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**, for the same reasons as stated above.

Background and Purpose

The San Francisco Giants Baseball Team is sponsoring a short fireworks display on May 29, 2004 in the waters of San Francisco Bay near SBC Park immediately following a baseball game on Memorial Day Weekend. The fireworks barge will be located

approximately 500 feet off of Pier 48. The safety zone is necessary to protect the spectators, vessels, and other property from the hazards associated with the pyrotechnics on the launch barge and the fireworks show. The temporary safety zone will consist of a portion of the navigable waters of San Francisco Bay, California. The Coast Guard has granted the San Francisco Giants and Pyro Spectaculars a marine event permit for this event.

Discussion of Rule

During the loading of the fireworks barge at Pier 50 in San Francisco, while the barge is being towed from Pier 50 to the location of the fireworks display, and until the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 15-minute fireworks display, which will take place in a position approximately 500 feet off of Pier 48 in position 37°46′34″ N, 122°23′00″ W, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Entry into, transit through or anchoring within this safety zone is prohibited, unless authorized by the Captain of the Port or his designated representative.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, will be punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Regulatory Evaluation

This 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).

Although the safety zone will restrict boating traffic within San Francisco Bay, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. As discussed above, the safety zone may affect the following entities, some of which may be small entities: The owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: Vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time. The maritime public will be advised of the safety zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this 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 because we are establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be 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 amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Temporarily add § 165.T11–014 to read as follows:

§ 165.T11–014 Safety Zone: San Francisco Bay, California.

(a) *Location.* During the loading of the fireworks barge at Pier 50 in San Francisco, during the transit of the barge to the location of the fireworks display, and until the fireworks display commences, the safety zone will encompass the navigable waters of San Francisco Bay within a radius of 100 feet around and under the fireworks launch barge. During the 15-minute fireworks display, the safety zone will increase in size to encompass the navigable waters of San Francisco Bay within a radius of 1,000 feet around and under the fireworks launch barge, which will be located 500 feet off of Pier 48 in approximate position 37°46′34″ N, 122°23′00″ W.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) Persons desiring to transit the area of a safety zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* The safety zone in this section is effective from 10 a.m. until 11:30 p.m, on May 29, 2004.

(d) *Enforcement period.* (1) A 100-foot safety zone will be enforced during loading operations, scheduled to commence at 10 a.m. (PDT) on May 29, 2004.

(2) A 100-foot safety zone will be enforced while the barge is towed from Pier 50 to the location of the fireworks display approximately 500 feet off of Pier 48. The towing evolution is scheduled to take place between 9 p.m. and 10 p.m. (PDT) on May 29, 2004. (3) The safety zone will increase in size to 1,000 feet, and be enforced during the 15-minute fireworks display, which will commence approximately 5 minutes after the conclusion of the baseball game. The conclusion of the baseball game is tentatively scheduled to occur between 10:30 p.m. and 11 p.m. (PDT) on May 29, 2004.

Dated: May 13, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 04–11694 Filed 5–21–04; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–194–1194; FRL–7658–5]

Approval and Promulgation of Air Quality Implementation Plans; Missouri Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Missouri that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

DATES: *Effective Date:* This action is effective May 24, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW. (Mail Code 6102T), Washington, DC

20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem at (913) 551–7659, or by e-mail at *vangoethem.evelyn@epa.gov*.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On June 29, 1999, EPA published a document in the **Federal Register** (64 FR 34717) beginning the new IBR procedure for Missouri. Today EPA is updating the IBR material.

EPA is also making minor corrections to the table in § 52.1320(c) as follows:

On November 26, 2003 (68 FR 66350), EPA updated rules 10–2.390 and 10–5.480. We are correcting the title of the rules in the table.

On May 18, 2000 (65 FR 31491), EPA updated rules 10–5.220, 10–5.295, 10–5.500, 10–5.520, 10–5.530, 10–5.540, and 10–5.550. The table is being corrected to include the missing **Federal Register** citation (65 FR 31491) for each rule.

On August 24, 1994 (59 FR 43480), EPA updated rule 10–5.350. The **Federal Register** page citation is being corrected to read 43480.

On November 30, 2003 (66 FR 59708), EPA updated rule 10–6.400. The table is being corrected to include the missing **Federal Register** citation (66 FR 59708).

On October 13, 1992 (57 FR 46778), EPA rescinded rule 50–2.400 under the heading Missouri Department of Public Safety Division 50—State Highway Patrol Chapter 2—Motor Vehicle Inspection. This rule is being removed from the table.

On April 22, 1998 (63 FR 19825) EPA approved and incorporated by reference revisions to the Kansas City Chapter 8—Air Quality rule Section 8–4. When Sections 8–2 and 8–5 of the Kansas City Air Quality rules were updated and added on December 22, 1999 (64 FR 71666), Section 8–4 was inadvertently removed from the table. We are restoring Section 8–4 into the table. The table is also being corrected to include the missing **Federal Register** citation (64 FR 71666) for Sections 8–2 and 8–5.

EPA is also making a minor correction to the table in § 52.1320(d). On May 5, 1995 (60 FR 22274), EPA approved consent orders for Doe Run Lead Smelter, Herculaneum, Missouri, numbers (7), (8) and (9) in the table. The **Federal Register** page citation is being corrected to read 22274.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 26, 2004.

William Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to April 1, 2004, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 1, 2004, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of April 1, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; or the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
	Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area			
10–2.040	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85, 50 FR 3337.	
10–2.090	Incinerators	2/25/70	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–2.100	Open Burning Restrictions	4/2/84	8/31/84, 49 FR 34484.	
10–2.150	Time Schedule for Compliance	2/25/70	3/18/80, 45 FR 17145.	
10–2.205	Control of Emissions from Aerospace Manufacture and Rework Facilities.	3/30/01	4/24/02, 67 FR 20038.	
10–2.210	Control of Emissions from Solvent Metal Cleaning.	10/30/01	4/24/02, 67 FR 20038.	
10–2.215	Control of Emissions from Solvent Clean-up Operations.	5/30/01	4/24/02, 67 FR 20038.	
10–2.220	Liquefied Cutback Asphalt Paving Restricted.	6/3/91	6/23/92, 57 FR 27939.	
10–2.230	Control of Emissions from Industrial Surface Coating Operations.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.260	Control of Petroleum Liquid Storage, Loading, and Transfer.	11/30/02	3/18/03, 68 FR 12827.	
10–2.290	Control of Emissions From Rotogravure and Flexographic Printing Facilities.	3/30/92	8/30/93, 58 FR 45451	The state rule has Sections (6)(A) and (6)(B), which EPA has not approved. 9/6/94, 59 FR 43376 (correction).
10–2.300	Control of Emissions from Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	11/29/91	3/26/03, 68 FR 14539	4/3/95, 60 FR 16806 (correction).
10–2.310	Control of Emissions from the Application of Automotive Underbody Deadeners.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.320	Control of Emissions from Production of Pesticides and Herbicides.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.330	Control of Gasoline Reid Vapor Pressure	5/30/01	2/13/02, 67 FR 6660.	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–2.340	Control of Emissions from Lithographic Printing Facilities.	09/30/03	10/30/03, 68 FR 61758.	
10–2.360	Control of Emissions from Bakery Ovens	11/30/95	7/20/98, 63 FR 38755.	
10–2.390	Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Laws.	09/30/2003	11/26/2003, 68 FR 66350.	
Chapter 3—Air Pollution Control Regulations for the Outstate Missouri Area				
10–3.010	Auto Exhaust Emission Controls	2/1/78	3/18/80, 45 FR 17145.	
10–3.030	Open Burning Restrictions	7/31/98	4/1/99, 64 FR 15688.	
10–3.040	Incinerators	2/1/78	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–3.060	Maximum Allowable Emissions of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating.	11/30/02	3/18/03, 68 FR 12833.	
Chapter 4—Air Quality Standards and Air Pollution Control Regulations for Springfield-Greene County Area				
10–4.040	Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating.	11/30/02	3/18/03, 68 FR 12833.	
10–4.080	Incinerators	12/16/69	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–4.090	Open Burning Restrictions	4/2/84	8/31/84, 49 FR 34484.	
10–4.140	Time Schedule for Compliance	12/15/69	3/18/80, 45 FR 17145.	
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area 10				
10–5.030	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85, 50 FR 3337.	
10–5.040	Use of Fuel in Hand-Fired Equipment Prohibited.	9/18/70	3/18/80, 45 FR 17145.	
10–5.060	Refuse Not To Be Burned in Fuel Burning Installations.	9/18/70	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–5.070	Open Burning Restrictions	1/29/95	2/17/00, 65 FR 8063.	
10–5.080	Incinerators	9/18/70	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–5.120	Information on Sales of Fuels to be Provided and Maintained.	9/18/70	3/18/80, 45 FR 17145.	
10–5.130	Certain Coals to be Washed	9/18/70	3/18/80, 45 FR 17145.	
10–5.220	Control of Petroleum Liquid Storage, Loading and Transfer.	8/30/99	5/18/00, 65 FR 31491.	
10–5.240	Additional Air Quality Control Measures May Be Required When Sources Are Clustered in a Small Land Area.	9/18/70	3/18/80, 45 FR 17145.	
10–5.250	Time Schedule for Compliance	1/18/72	3/18/80, 45 FR 17145.	
10–5.290	More Restrictive Emission Limitations for Sulfur Dioxide and Particulate Matter in the South St. Louis Area.	5/3/82	8/30/82, 47 FR 38123	The state has deleted all provisions to N.L. Industries, which is no longer in operation, and has made significant changes to the provisions affecting Carondelet Coke.
10–5.295	Control of Emissions From Aerospace Manufacturing and Rework Facilities.	2/29/00	5/18/00, 65 FR 31491.	
10–5.300	Control of Emissions from Solvent Metal Cleaning.	5/30/02	11/22/02, 67 FR 70319.	
10–5.310	Liquefied Cutback Asphalt Restricted	3/1/89	3/5/90, 55 FR 7712.	
10–5.330	Control of Emissions from Industrial Surface Coating Operations.	12/30/00	7/20/01, 66 FR 37906.	
10–5.340	Control of Emissions From Rotogravure and Flexographic Printing Facilities.	3/30/92	8/30/93, 58 FR 45451	The state rule has Section (6)(A)(B), which EPA has not approved. 9/6/94, 59 FR 43376 (correction).
10–5.350	Control of Emissions From Manufacture of Synthesized Pharmaceutical Products.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (Correction Notice).
10–5.360	Control of Emissions from Polyethylene Bag Sealing Operations.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (Correction Notice).
10–5.370	Control of Emissions from the Application of Deadeners and Adhesives.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (Correction Notice).
10–5.380	Motor Vehicle Emissions Inspection	12/30/02	5/12/03, 68 FR 25418.	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–5.390	Control of Emissions from Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	08/30/00	8/14/01, 66 FR 42607.	
10–5.410	Control of Emissions From Manufacture of Polystyrene Resin.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (Correction Notice).
10–5.420	Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants.	3/1/89	3/5/90, 55 FR 7712.	
10–5.440	Control of Emissions from Bakery Ovens	12/30/96	2/17/00, 65 FR 8063.	
10–5.442	Control of Emissions from Offset Lithographic Printing Operations.	05/28/95	2/17/00, 65 FR 8063.	
10–5.450	Control of VOC Emissions from Traffic Coatings.	05/28/95	2/17/00, 65 FR 8063.	
10–5.451	Control of Emissions from Aluminum Foil Rolling.	9/30/00	7/20/01, 66 FR 37908.	
10–5.455	Control of Emissions from Solvent Cleaning Operations.	02/28/97	2/17/00, 65 FR 8063.	
10–5.480	Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Laws.	09/30/2003	11/26/2003, 68 FR 66350.	
10–5.490	Municipal Solid Waste Landfills	12/30/96	2/17/00, 65 FR 8063	
10–5.500	Control of Emissions From Volatile Organic Liquid Storage.	2/29/00	5/18/00, 65 FR 31491.	
10–5.510	Control of Emissions of Nitrogen Oxides ..	2/29/00	5/18/00, 65 FR 31484.	
10–5.520	Control of Volatile Organic Compound Emissions From Existing Major Sources.	2/29/00	5/18/00, 65 FR 31491.	
10–5.530	Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations.	2/29/00	5/18/00, 65 FR 31491.	
10–5.540	Control of Emissions From Batch Process Operations.	2/29/00	5/18/00, 65 FR 31491.	
10–5.550	Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	2/29/00	5/18/00, 65 FR 31491.	
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.010	Ambient Air Quality Standards	4/18/88	7/31/89, 54 FR 31524	The state adopted and submitted a revised ozone standard and a lead standard which EPA never acted on.
10–6.020	Definitions and Common Reference Tables.	5/30/00	3/23/01, 66 FR 16139.	
10–6.030	Sampling Methods for Air Pollution Sources.	10/31/98	4/1/99, 64 FR 15688.	
10–6.040	Reference Methods	07/30/01	10/15/01, 66 FR 52361.	
10–6.050	Start-up, Shutdown, and Malfunction Conditions.	2/28/02	8/27/02, 67 FR 54967.	
10–6.060	Construction Permits Required	4/30/03	8/11/03, 68 FR 47468	Section 9, pertaining to hazardous air pollutants, is not SIP approved.
10–6.065	Operating Permits	4/30/03	9/17/03, 68 FR 54369	The state rule has sections (4)(A), (4)(B), and (4)(H)—Basic State Operating Permits. EPA has not approved those sections. Section (6), Part 70 Operating Permits, has been approved as an integral part of the operating permit program and has not been approved as part of the SIP. The ''intermediate source'' program in Section (5) is approved, along with other provisions of 10–6.065 on which it relies.
10–6.110	Submission of Emission Data, Emission Fees and Process Information.	8/30/02	11/22/02, 67 FR 70321 ..	Section (5), Emission Fees, has not been approved as part of the SIP.

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–6.120	Restriction of Emissions of Lead from Primary Lead Smelter-Refinery Installations.	03/30/01	4/16/02, 67 FR 18501.	
10–6.130	Controlling Emissions During Episodes of High Air Pollution Potential.	11/30/02	3/18/03, 68 FR 12831.	
10–6.140	Restriction of Emissions Credit for Reduced Pollutant Concentrations from the Use of Dispersion Techniques.	5/1/86	3/31/89, 54 FR 13184.	
10–6.150	Circumvention	8/15/90	4/17/91, 56 FR 15500.	
10–6.170	Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.	8/30/98	3/31/00, 65 FR 17166.	
10–6.180	Measurement of Emissions of Air Contaminants.	11/19/90	7/23/91, 56 FR 33714.	
10–6.210	Confidential Information	1/27/95	2/29/96, 61 FR 7714.	
10–6.220	Restriction of Emission of Visible Air Contaminants.	11/30/02	3/18/03, 68 FR 12829	
10–6.260	Restriction of Emission of Sulfur Compounds.	7/31/96	8/27/98, 63 FR 45727	EPA did not approve section (4) of the state rule.
10–6.280	Compliance Monitoring Usage	3/30/02	8/27/02, 67 FR 54963.	
10–6.300	Conformity of General Federal Actions to State Implementation Plans.	8/31/96	5/14/97, 62 FR 26395.	
10–6.330	Restriction of Emissions from Batch-type Charcoal Kilns.	6/30/98	12/8/98, 63 FR 67591.	
10–6.350	Emissions Limitations and Emissions Trading of Oxides of Nitrogen.	8/30/00	12/28/00, 65 FR 82288.	
10–6.400	Restriction of Emission of Particulate Matter From Industrial Processes.	09/30/01	11/30/01, 66 FR 59708.	
10–6.410	Emissions Banking and Trading	04/30/03	8/11/03, 68 FR 47468.	
Missouri Department of Public Safety Division 50—State Highway Patrol Chapter 2—Motor Vehicle Inspection				
50–2.010	Definitions	4/11/82	8/12/85, 50 FR 32411.	
50–2.020	Minimum Inspection Station Requirements.	10/11/82	8/12/85, 50 FR 32411.	
50–2.030	Inspection Station Classification	12/11/77	8/12/85, 50 FR 32411.	
50–2.040	Private Inspection Stations	5/31/74	8/12/85, 50 FR 32411.	
50–2.050	Inspection Station Permits	11/11/79	8/12/85, 50 FR 32411.	
50–2.060	Display of Permits, Signs and Poster	11/31/74	8/12/85, 50 FR 32411.	
50–2.070	Hours of Operation	11/11/83	8/12/85, 50 FR 32411.	
50–2.080	Licensing of Inspector/Mechanics	4/13/78	8/12/85, 50 FR 32411.	
50–2.090	Inspection Station Operational Requirements.	8/11/78	8/12/85, 50 FR 32411.	
50–2.100	Requisition of Inspection Stickers and Decals.	6/12/80	8/12/85, 50 FR 32411.	
50–2.110	Issuance of Inspection Stickers and Decals.	12/11/77	8/12/85, 50 FR 32411.	
50–2.120	MVI–2 Form	11/11/83	8/12/85, 50 FR 32411.	
50–2.130	Violations of Laws or Rules Penalty	5/31/74	8/12/85, 50 FR 32411.	
50–2.260	Exhaust System	5/31/74	8/12/85, 50 FR 32411.	
50–2.280	Air Pollution Control Devices	12/11/80	8/12/85, 50 FR 32411.	
50–2.290	Fuel Tank	5/3/74	8/12/85, 50 FR 32411.	
50–2.350	Applicability of Motor Vehicle Emission Inspection.	5/1/84	8/12/85, 50 FR 32411.	
50–2.360	Emission Fee	11/1/83	8/12/85, 50 FR 32411.	
50–2.370	Inspection Station Licensing	12/21/90	10/13/92, 57 FR 46778.	
50–2.380	Inspector/Mechanic Licensing	11/1/83	8/12/85, 50 FR 32411.	
50–2.390	Safety/Emission Stickers	11/1/83	8/12/85, 50 FR 32411.	
50–2.401	General Specifications	12/21/90	10/13/92, 57 FR 46778.	
50–2.402	MAS Software Functions	12/21/90	10/13/92, 57 FR 46778.	The SIP does not include Section (6), Safety Inspection.
50–2.403	Missouri Analyzer System (MAS) Display and Program Requirements.	12/21/90	10/13/92, 57 FR 46778.	The SIP does not include Section (3)(B)4, Safety Inspection Sequences or (3)(M)5(II), Safety Inspection Summary.
50–2.404	Test Record Specifications	12/21/90	10/13/92, 57 FR 46778.	The SIP does not include Section (5), Safety Inspection Results.
50–2.405	Vehicle Inspection Certificate, Vehicle Inspection Report, and Printer Function Specifications.	12/21/90	10/13/92, 57 FR 46778.	
50–2.406	Technical Specifications for the MAS	12/21/90	10/13/92, 57 FR 46778.	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
50–2.407	Documentation, Logistics and Warranty Requirements.	12/21/90	10/13/92, 57 FR 46778.	
50–2.410	Vehicles Failing Reinspection	12/21/90	10/13/92, 57 FR 46778.	
50–2.420	Procedures for Conducting Only Emission Tests.	12/21/90	10/13/92, 57 FR 46778.	
Kansas City Chapter 8—Air Quality				
8–2	Definitions	12/10/98	12/22/99, 64 FR 71666.	
8–4	Open burning	10/31/96	4/22/98, 65 FR 19823.	
8–5	Emission of particulate matter	12/10/98	12/22/99, 64 FR 71666	Only subsections 8–5(c)(1)b, 8–5(c)(1)c, 8–5(c)(2)a, 8–5(c)(3)a, 8–5(c)(3)b, 8–5(c)(3)c, 8–5(c)(3)d are approved in the SIP.
Springfield—Chapter 2A—Air Pollution Control Standards				
Article I	Definitions	10/31/96	4/22/98, 63 FR 19823	Only Section 2A–2 is approved by EPA.
Article VII	Stack Emission Test Method	10/31/96	4/22/98, 63 FR 19823	Only Section 2A–25 is approved by EPA.
Article IX	Incinerator	10/31/96	4/22/98, 63 FR 19823	Only Sections 2A–34 through 38 are approved by EPA.
Article XX	Test Methods and Tables	10/31/96	4/22/98, 63 FR 19823	Only Sections 2A–51, 55, and 56 are approved by EPA.
St. Louis City Ordinance 65645				
Section 6	Definition	8/28/03	12/9/03, 68 FR 68523	The phrase ''other than liquids or gases'' in the Refuse definition has not been approved.
Section 15	Open Burning Restrictions	8/28/03	12/9/03, 68 FR 68523.	

(d) EPA-approved state source-specific permits and orders.

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
(1) ASARCO Inc. Lead Smelter, Glover, MO.	Order	8/13/80	4/27/81, 46 FR 23412.	
(2) St. Joe Lead (Doe Run) Company Lead Smelter, Herculaneum, MO.	Order	3/21/84	6/11/84, 49 FR 24022.	
(3) AMAX Lead (Doe Run) Company Lead Smelter, Boss, MO.	Order	9/27/84	1/7/85, 50 FR 788.	
(4) Gusdorf Operating Permit 11440 Lackland Road, St. Louis County, MO.	Permit Nos: 04682–04693	* 4/29/80	10/15/84, 49 FR 40164.	
(5) Doe Run Lead Smelter, Herculaneum, MO.	Consent Order	3/9/90	3/6/92, 57 FR 8077.	
(6) Doe Run Lead Smelter, Herculaneum, MO.	Consent Order	8/17/90	3/6/92, 57 FR 8077.	
(7) Doe Run Lead Smelter, Herculaneum, MO.	Consent Order	7/2/93	5/5/95, 60 FR 22274.	
(8) Doe Run Lead Smelter, Herculaneum, MO.	Consent Order (Modification)	4/28/94	5/5/95, 60 FR 22274	In a notice published on 8/15/97 at 62 FR 43647, EPA required implementation of the contingency measures.
(9) Doe Run Lead Smelter, Herculaneum, MO.	Consent Order (Modification)	11/23/94	5/5/95, 60 FR 22274.	
(10) Doe Run Buick Lead Smelter, Boss, MO.	Consent Order	7/2/93	8/4/95, 60 FR 39851.	
(11) Doe Run Buick Lead Smelter, Iron County, MO.	Consent Order (Modification)	9/29/94	8/4/95, 60 FR 39851.	
(12) ASARCO Glover Lead Smelter, Glover, MO.	Consent Decree CV596–98CC with exhibits A–G.	7/30/96	3/5/97, 62 FR 9970.	

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS—Continued

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
(13) Eagle-Picher Technologies, Joplin, MO.	Consent Agreement	08/26/99	4/24/00, 65 FR 21651.	
(14) Doe Run Resource Recycling Facility near Buick, MO.	Consent Order	5/11/00	10/18/00, 65 FR 62298.	
(15) St. Louis University	Medical Waste Incinerator	9/22/92	4/22/98, 63 FR 19823.	
(16) St. Louis University	Permit Matter No. 00–01–004	1/31/00	10/26/00, 65 FR 64158.	
(17) St. Joseph Light & Power SO_2.	Consent Decree	05/21/01	11/15/01, 66 FR 57391.	
(18) Asarco, Glover, MO	Modification of Consent Decree, CV596–98CC.	07/31/00	4/16/02, 67 FR 18501.	
(19) Doe Run, Herculaneum, MO	Consent Judgement, CV301–0052C-J1, with Work Practice Manual and S.O.P. for Control of Lead Emissions (Rev 2000).	01/05/01	4/16/02, 67 FR 18501.	
(20) Springfield City Utilities James River Power Station SO_2.	Consent Agreement	12/06/01	3/25/02, 67 FR 13572.	
(21) St. Louis University	Permit Matter No. 00–01–004	8/28/03	12/9/03, 68 FR 68523	Updates a reference in section II.B. to Ordinance No. 65645.

* St. Louis County.

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(1) Kansas City and Outstate Air Quality Control Regions Plan.	Kansas City and Outstate	1/24/72	5/31/72, 37 FR 10875.	
(2) Implementation Plan for the Missouri portion of the St. Louis Interstate Air Quality Control Region.	St. Louis	1/24/72	5/31/72 37, FR 10875.	
(3) Effects of adopting Appendix B to NO_2 emissions.	St. Louis	3/27/72	5/31/72, 37 FR 10875.	
(4) CO air quality data base	St. Louis	5/2/72	5/31/72, 37 FR 10875.	
(5) Budget and manpower projections	Statewide	2/28/72	10/28/72, 37 FR 23089.	
(6) Emergency episode manual	Kansas City	5/11/72	10/28/72, 37 FR 23089.	
(7) Amendments to Air Conservation Law	Statewide	7/12/72	10/28/72, 37 FR 23089.	
(8) Air monitoring plan	Outstate	7/12/72	10/28/72, 37 FR 23089.	
(9) Amendments to Air Conservation Law	Statewide	8/8/72	10/28/72, 37 FR 23089.	
(10) Transportation control strategy	Kansas City	5/11/73 5/21/73	6/22/73, 38 FR 16566.	
(11) Analysis of ambient air quality data and recommendation to not designate the area as an air quality maintenance area.	Kansas City	4/11/74	3/2/76, 41 FR 8962.	
(12) Recommendation to designate air quality maintenance areas.	St. Louis, Columbia, Springfield.	5/6/74	9/9/75, 40 FR 41950.	
(13) Plan to attain the NAAQS	Kansas City, St. Louis	7/2/79	4/9/80, 45 FR 24140	Correction notice published 7/11/80.
(14) Schedule for I/M program and commitment regarding difficult transportation control measures (TCMs).	St. Louis	9/9/80	3/16/81, 46 FR 16895.	
(15) Lead SIP	Statewide	9/2/80 2/11/81 2/13/81	4/27/81, 46 FR 23412; 7/19/84, 49 FR 29218.	Correction notice published 5/15/81.
(16) Report on recommended I/M program.	St. Louis	12/16/80	8/27/81, 46 FR 43139	No action was taken on the specific recommendations in the report.
(17) Report outlining commitments to TCMs, analysis of TCMs, and results of CO dispersion modeling.	St. Louis	2/12/81 4/28/81	11/10/81, 46 FR 55518.	
(18) 1982 CO and ozone SIP	St. Louis	12/23/82 8/24/83	10/15/84, 49 FR 40164.	
(19) Air quality monitoring plan	Statewide	6/6/84	9/27/84, 49 FR 38103.	
(20) Vehicle I/M program	St. Louis	8/27/84	8/12/85, 50 FR 32411.	

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(21) Visibility protection plan	Hercules Glades and Mingo Wildlife Area.	5/3/85	2/10/86, 51 FR 4916.	
(22) Plan for attaining the ozone standard by December 31, 1987.	St. Louis	8/1/85	9/3/86, 51 FR 31328.	
(23) PM_{10} plan	Statewide	3/29/88 6/15/88	7/31/89, 54 FR 31524.	
(24) Construction permit fees including Chapter 643 RSMo.	Statewide	1/24/89 9/27/89	1/9/90, 55 FR 735.	
(25) PSD NO_X requirements including a letter from the state pertaining to the rules and analysis.	Statewide	7/9/90	3/5/91, 56 FR 9172.	
(26) Lead plan	Herculaneum	9/6/90 5/8/91	3/6/92, 57 FR 8076.	
(27) Ozone maintenance plan	Kansas City	10/9/91	6/23/92, 57 FR 27939.	
(28) Small business assistance plan	Statewide	3/10/93	10/26/93, 58 FR 57563.	
(29) Part D Lead plan	Herculaneum	7/2/93 6/30/94 11/23/94	5/5/95, 60 FR 22274.	
(30) Intermediate permitting program including three letters pertaining to authority to limit potential to emit hazardous air pollutants.	Statewide	3/31/94 11/7/94 10/3/94 2/10/95	9/25/95, 60 FR 49340.	
(31) Part D lead plan	Bixby	7/2/93 6/30/94	8/4/95, 60 FR 39851.	
(32) Transportation conformity plans including a policy agreement and a letter committing to implement the state rule consistent with the Federal transportation conformity rule.	St. Louis, Kansas City	2/14/95	2/29/96, 61 FR 7711.	
(33) Emissions inventory update including a motor vehicle emissions budget.	Kansas City	4/12/95	4/25/96, 61 FR 18251.	
(34) Part D Lead Plan	Glover	8/14/96	≤3/5/97, 62 FR 9970	
(35) CO Maintenance Plan	St. Louis	6/13/97 6/15/98	1/26/99, 64 FR 3855.	
(36) 1990 Base Year Inventory	St. Louis	1/20/95	2/17/00, 65 FR 8063	
(37) 15% Rate-of-Progress Plan	St. Louis	11/12/99	5/18/00, 65 FR 31489.	
(38) Implementation plan for the Missouri inspection maintenance program.	St. Louis	11/12/99	5/18/00, 65 FR 31482.	
(39) Doe Run Resource Recycling Facility near Buick, MO.	Dent Township in Iron County.	5/17/00	10/18/00, 65 FR 62298.	
(40) Commitments with respect to implementation of rule 10 CSR 10–6.350, Emissions Limitations and Emissions Trading of Oxides of Nitrogen.	Statewide	8/8/00	12/28/00, 65 FR 82288.	
(41) Contingency Plan including letter of April 5, 2001.	St. Louis	10/6/97, 4/5/01	6/26/01, 66 FR 34011.	
(42) Ozone 1-Hour Standard Attainment Demonstration Plan for November 2004 including 2004 On-Road Motor Vehicle Emissions Budgets.	St. Louis	11/10/99, 11/2/00, 2/28/01, 3/7/01	6/26/01, 66 FR 34011.	
(43) Doe Run Resources Corporation Primary Lead Smelter, 2000 Revision of Lead SIP.	Herculaneum, MO	1/09/01	4/16/02, 67 FR 18502	The SIP was reviewed and approved by EPA on 1/11/01.
(44) Doe Run Resources Corporation Primary Lead Smelter, 2000 Revision of Lead SIP.	Glover, MO	6/15/01	4/16/02, 67 FR 18502	The SIP was reviewed and approved by EPA on 6/26/01.
(45) Maintenance Plan for the Missouri Portion of the St. Louis Ozone Nonattainment Area including 2014 On-Road Motor Vehicle Emission Budgets.	St. Louis	12/06/02	5/12/03, 68 FR 25442.	
(46) Maintenance Plan for the 1-hour ozone standard in the Missouri portion of the Kansas City maintenance area for the second ten-year period.	Kansas City	12/17/02	1/13/04, 69 FR 1923.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA208–4215a; FRL–7664–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on July 23, 2004, without further notice, unless EPA receives adverse written comment by June 23, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by PA208–4215 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. PA208–4215. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or via e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revisions

On July 2, 2003, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO_X. This rulemaking pertains to two of those sources, namely, National Fuel Gas Supply Corporation's Roystone Compressor Station, located in Sheffield, Warren County, Pennsylvania; and Crompton Corporation's facility located in Fairview Township, Butler County, Pennsylvania. These facilities are considered major for NO_X and VOC. The RACT determinations and requirements are included in operating permits issued by PADEP. The RACT requirements imposed by PADEP and submitted to EPA for approval as SIP revisions are described in the following paragraphs.

A. National Fuel Gas Supply Corporation

The National Fuel Gas Supply Corporation (National) operates natural gas compressors and generators at its Roystone Compressor Station located in Sheffield Township, Warren County. The PADEP established and imposed RACT for both NO_X and VOC in operating permit No. OP 62–141F, issued and effective April 1, 2003. Under the conditions of the permit, the allowable NO_X emission rate for Units 1, 2, and 3 shall not exceed 5.3 pounds per hour (lbs/hr) and the allowable NO_X emission rate for Units 4, 5, 6, 7 and 8 shall not exceed 2.5 lbs/hr. The three boilers manufactured by Penneco, Struthers and Peerless; the two Smith Reboilers for Line D and Line L; and the two Pipeline Heaters (Erie L and Line D) are subject to 25 PA Code Section 129.93(c)(1). The RACT emission limitations for these sources are the installation, maintenance and operation of the sources in accordance with the manufacturers specifications. Standby generators 1 and 2 and the Waukesha Air Compressor shall comply with the presumptive RACT requirements as stated in 25 PA Code Section 129.93(c)(5). These units are to be installed, maintained, and operated in accordance with the manufacturer's specifications and good air pollution control practices. Under the conditions of its operating permit for the Roystone station, National must maintain records of the VOC emissions from the Line D and Line L dehydrators. National must maintain records of the actual throughput per day, the actual hours of operation and the glycol circulation rate

for each dehydrator. The emissions from the regenerator overheads shall be exhausted through the reboiler heater exhaust stack. National must monitor the control device by conducting a visual observation of the device and the pilot light at least once per manned 8-hour shift, and maintain a log of the visual observations. National must maintain a Leak Detection and Repair (LDAR) Plan for the fugitive emissions from the facility to represent RACT for facility-wide fugitive emissions.

B. Crompton Corporation

The Crompton Corporation (Crompton) operates a facility in Fairview Township, Butler County subject to RACT for NO_X and VOC. The PADEP established and imposed RACT for this facility in operating permit No. 10–037, issued and effective June 4, 2003. Under the conditions of this permit, NO_X emissions at Boiler #7 shall not exceed 0.180 lbs/MMBTU while burning natural gas, and shall not exceed 0.40 lbs/MMBTU while burning oil. Under the conditions of the permit, RACT for Boiler #7 shall also consist of an annual adjustment or tune-up that will consist of an inspection, adjustment, cleaning or replacement of the fuel burning equipment, inspection and adjustment of the flame characteristics, and the inspection and adjustment of the air-to-fuel control system. The tune up shall be performed in accordance with the EPA document ''Combustion Efficiency Optimization Manual for Operators of Oil and Gas-Fired Boilers'', EPA–340/1–83–023, September 1983. The permit also requires that Boiler #7 boiler be tested annually by Crompton with a PADEP-approved portable analyzer. Under the conditions of the permit, PADEP may require annual stack tests in accordance with EPA reference methods pending the submission of the results from the portable analyzer. Separate tests shall be performed to demonstrate compliance with the NO_X emission rates imposed on Boiler #7 when firing natural gas and when firing oil. The VOC emissions from the Low-Cat Hydrogen Recovery Unit Vent V–64 (Source 125) shall not exceed 9.29 lbs/hr. The facility shall comply with the record-keeping requirements of 25 PA Code Section 129.95. It should also be noted that under Condition 8 of OP 10–137, the Utility Fractionator Unit Vent D–204 (Source 131) which had potential VOC emissions of 20.95 lbs/hr and 82.11 tons/year (based upon 7838 hours of operation) was shutdown in January 2002 and shall no longer be operated. Therefore, under OP 10–137, Crompton is not required to demonstrate RACT for this source.

III. EPA's Evaluation of the SIP Revisions

EPA is approving the operating permits issued to the National and Crompton facilities by PADEP as described in section II. EPA is approving them as SIP revisions because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP submitted by PADEP on July 2, 2003. These revisions consist of operating permits which establish and require RACT for National Fuel Gas Supply Corporation's Roystone Compressor Station, located in Sheffield, Warren County, Pennsylvania (OP 62–141F); and Crompton Corporation's facility located in Fairview Township, Butler County, Pennsylvania (OP 10–037). EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on July 23, 2004, without further notice unless we receive adverse comment by June 23, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule to approve RACT for National Fuel Gas Supply Corporation's Roystone Compressor Station located in Sheffield, Warren County, Pennsylvania and Crompton Corporation's facility located in Fairview Township, Butler County, Pennsylvania does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 13, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(213) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(213) Revisions pertaining to NO_X and VOC RACT for National Fuel Gas Supply Corporation's Roystone Compressor Station, located in Sheffield, Warren County, Pennsylvania; and Crompton Corporation's facility located in Fairview Township, Butler County, Pennsylvania submitted by the Secretary of the Pennsylvania Department of the Environment on July 2, 2003.

(i) Incorporation by reference.

(A) Letter submitted on July 2, 2003, by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of operating permits:

(B) Operating permit (OP):

(*1*) National Fuel Gas Supply Corp., Roystone Compressor Station, Sheffield, Warren County, OP 62–141F, effective date April 1, 2003.

(*2*) Crompton Corporation, Fairview Township, Butler County, OP 10–037, effective date June 4, 2003.

(ii) Additional Material—Additional materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(213)(i) of this section.

[FR Doc. 04–11668 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL221–1a; FRL–7657–8]

Approval and Promulgation of State Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a site-specific revision to the Illinois volatile organic compound (VOC) State Implementation Plan (SIP) for the Horween Leather Company (Horween) in Chicago, Illinois. By its submittal dated May 28, 2003, the Illinois Environmental Protection Agency (Illinois EPA) requested that EPA approve a site-specific rule that would change the VOC control requirements that would apply to a small amount of specialty leathers and allow them to be produced at Horween's leather production facility in Chicago. This request is approvable because it satisfies reasonably available control technology (RACT) and is a more suitable control measure for certain of its specialty leather coating operations than the existing rule which this amends. The rationale for the approval and other information are provided in this rulemaking action.

DATES: This ''direct final'' rule is effective July 23, 2004, unless EPA receives written adverse comment by June 23, 2004. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. IL221 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of

operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. IL221. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. ''For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.''

Docket: All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal at (312) 886–6052.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information
II. EPA Action and Review
1. What Action Is EPA Taking Today?
2. Why Is EPA Taking this Action?
3. What Are the Control Requirements in the Adjusted Standard?
4. What Information Did Illinois submit in Support of this SIP?
5. Was a Public Hearing Held?
6. What led to the SIP Revision and why is it being Approved?
III. Final Rulemaking Action
IV. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

Probably not because this action applies to a single source, Horween, in Chicago, IL.

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

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

II. EPA Action and Review

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Illinois VOC SIP an amendment to the leather coating rules that apply in the Chicago ozone nonattainment area. Specifically, EPA is approving a new Section 218.929 that changes the VOC control requirements for coating a small amount of specialty leathers at Horween's leather production facility located at 2015 North Elston Avenue, Chicago, Illinois. These control requirements were adopted in the Illinois Pollution Control Board's February 20, 2003, Final Order R02–20 which adopts a revision to 35 Ill. Adm. Code 218.112 (in which a test method is added to Illinois' Incorporation by Reference Section) and new Section 35. Ill. Adm. Code 218.929.

2. Why Is EPA Taking This Action?

The VOC control requirements contained in Section 218.929 represent a RACT level of VOC control for the specialty shoe leathers that are covered by them. They are based upon leather coating requirements that had previously been approved by EPA as a SIP revision for a company making products similar to Horween.

3. What Are the Control Requirements in the Adjusted Standard?

Section 218.929 adds control requirements, and measures to ensure their enforceability, that apply to certain specialty leathers coated at Horween's Chicago leather manufacturing facility. These specialty leathers are cementable and dress or performance shoe leathers. Cementable shoe leather has over 12 percent but less than 25 percent wax, grease, polymers and oils embedded into the leather. By contrast, the previously approved definition of specialty leather (with less stringent VOC content limits) specifies leather with over 25% by weight grease, wax, and oils. Dress or performance shoe leather is finished with coating materials containing water emulsified materials using water miscible solvent materials and is used primarily for the manufacture of sewn shoes where the leather must be capable of soaking with a fine, dressy finish. Also, the 10-ton exemption for stain pursuant to Section 218.926(b)(2)(i) does not apply to the specialty leathers covered by Section 218.929.

Section 218.929 (b) provides numeric limitations on emissions of the specialty leather products described above and in Section 218.929 (a). They are 14 lbs. VOC/1000 square feet for non-water resistant leathers; 24 lbs. VOC/1000

square feet for water resistant leather; and a total annual VOC emission limit of 20 tons. The leather will be designated as water resistant or non-water resistant by using ASTM D 2099–00, which is incorporated by reference in Section 218.112 of Part 218.

Section 218.929 (c) requires that Horween comply with its approved standard operating and maintenance procedures, which minimize the volatilization of solvents during the measuring and/or mixing of coatings, minimize VOC fugitive losses from the coating and solvent storage rooms, and minimize solvent usage or VOC losses during equipment cleanup and during transport.

Section 218.929 (d) specifies reporting and recordkeeping requirements to ensure that the coating limits in section 218.929 (b) are met. This includes keeping records of the VOC content and gallons of each coating and the total pounds of VOC of all coatings applied to each category of leather, and the total area of each category of leather produced during each month.

4. What Information Did Illinois Submit in Support of This SIP?

The Illinois EPA submitted the following information and supporting documentation (along with other less substantive procedural documents) in support of its request for an Amendment, contained in 35 Ill. Adm. Code 218.929, to the leather coating rules for Horween.

(a) Horween's Petition for a site-specific rulemaking filed with the Illinois Pollution Control Board on February 4, 2002.

(b) On May 17, 2002, the Illinois Pollution Control Board issued a notice of public hearing for June 26, 2002, in Chicago. A public hearing was subsequently held on that day.

(c) Testimony by Horween in support of its petition filed with the Illinois Pollution Control Board on June 19, 2002.

(d) On July 19, 2002, Horween filed post-hearing comments in which it successfully argued that high-volume, low-pressure (HVLP) spray application equipment is not feasible at its leather manufacturing facility.

(d) The February 20, 2003, Opinion and Order of the Illinois Pollution Control Board, in which it adopted the amendments to the leather coating rules for Horween's Chicago leather manufacturing facility in 35 Ill. Adm. Code 218.929.

5. Was a Public Hearing Held?

A public hearing was held on June 26, 2002, in Chicago and a transcript of the hearing was submitted by Illinois EPA in support of its request for a SIP revision.

6. What Led to the SIP Revision and Why Is it Being Approved?

Horween petitioned the Illinois Pollution Control Board for a site-specific rule revision that would apply to a small amount of new specialty leathers that it would like to produce. In order to meet changing customer demands, to counter its loss of business since 1995, it must meet the requirements of its customers for different types of specialty-type leathers, including cementable pull up, leathers designed for hand-sewn shoes, and other performance leathers that were not considered when Illinois' existing leather coating rules were adopted.

These include leathers with between 12% and 25% grease, wax and oil content which cannot be finished with coatings that comply with the generally applicable 3.5 lbs. VOC per gallon regulation (because coating difficulties begin to occur at a grease, wax and oils content of 12%) and cannot satisfy the definition of specialty leather, with its less stringent 38 lbs. VOC per 1000 square feet of leather limitation. A second group of leathers are intended for hand-sewn shoes with an extremely glossy, dressy look and fine, smooth finish. The top finish of the leather must be able to withstand ironing with high temperatures to give a uniform, smooth appearance, and be compatible with finishes used to stain and antique the shoes. Water-based finishes that comply with the 3.5 lbs. VOC per gallon regulation do not satisfy these requirements.

In order to satisfy Horween's leather manufacturing requirements and to ensure that RACT coating limits are achieved, Illinois adopted leather coating limits which had been previously approved by EPA as RACT for a similar facility. In addition, the emissions from these coatings are limited to 20 tons of VOCs per year. These control requirements, therefore, satisfy RACT and are approvable.

III. Final Rulemaking Action

For the reasons given above, EPA is approving into the Illinois VOC SIP a revision to the Incorporation by Reference list in 35 ILL. Adm. Code 218.112 and a new Section 218.929 that changes the VOC control requirements for coating a small amount of specialty leathers at Horween's leather manufacturing facility.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 23, 2004 without further notice unless we receive relevant adverse written comments by June 23, 2004. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 23, 2004.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 26, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.720 is amended by adding paragraph (c)(170) for a site-specific rule revision for Horween Leather Company's Chicago, Illinois leather manufacturing facility as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(170) On May 28, 2003, Illinois submitted an amendment to its leather coating rules for the Horween Leather Company's Chicago leather manufacturing facility. This adds a test method in Section 218.112(a)(26) and a new Section 35 Ill. Adm. Code 218.929. These amendments were incorporated in the Illinois Pollution Control Board's February 20, 2003, Final Order R02–20.

(i) Incorporation by reference. Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 218 Organic Material Emission Standards and Limitations for the Chicago Area.

(A) Subpart A: General Provisions, Section 218.112 Incorporations by Reference, (a) American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–9555, 26) ASTM D2099–00. Amended at 27 Ill. Reg. 7283, effective April 8, 2003.

(B) Subpart PP: Miscellaneous Fabricated Product Manufacturing Processes, Section 218.929 Cementable and Dress or Performance Shoe Leather. Added at 27 Ill. Reg. 7283, effective April 8, 2003.

[FR Doc. 04–11557 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0440c; FRL–7665–3]

Interim Final Determination That State Has Corrected a Deficiency in the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: EPA is making an interim final determination to stay the imposition of sanctions based on a direct final approval of revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern VCAPCD Rule 70.

DATES: This interim final determination is effective on May 24, 2004. However, comments will be accepted until June 23, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne

Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118 or *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 29, 2002 (67 FR 65873), we published a limited approval and limited disapproval of VCAPCD Rule 70 as revised locally on November 14, 2000 and submitted by the State on January 15, 2004. We based our limited disapproval action on a deficiency in the submittal. This limited disapproval action started a sanctions clock for imposition of offset sanctions on May 30, 2004, 18 months after November 29, 2002, and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On November 11, 2003, ADEQ adopted revisions to Rule 70 that were intended to correct the deficiency identified in our limited disapproval action. On January 15, 2004, the State submitted these revisions to EPA. In the Rules section of today's **Federal Register**, we have made direct final approval on this submittal because we believe it corrects the deficiencies identified in our October 29, 2002 disapproval action. Based on today's direct final approval, we are taking this final rulemaking action, effective on publication, to stay the imposition of sanctions that were triggered by our October 29, 2002 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the direct final approval of revised VCAPCD Rule 70, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay the CAA section 179 sanctions associated with VCAPCD Rule 70 based on our concurrent direct final approval of the State's SIP revision as correcting a deficiency that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

We believe that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay the sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA, because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 24, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2004.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 04–11552 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0440a; FRL–7665–2]

Revision to the California State Implementation Plan, Bay Area Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The revisions concern the emission of volatile organic compounds (VOCs) from episodic releases from relief devices, the emission of VOCs from the transfer of gasoline into storage containers at bulk terminals, and the storage and transfer of gasoline at dispensing facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 23, 2004 without further notice, unless EPA receives adverse comments by June 23, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rule we are approving with the date that it was amended or revised by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended or revised	Submitted
BAAQMD	8–28	Episodic Releases from Pressure Relief Devices at Petroleum Refineries and Chemical Plants.	03/18/98 Amended	03/28/00
MBUAPCD	418	Transfer of Gasoline into Stationary Storage Containers	04/16/03 Revised	08/11/03
VCAPCD	70	Storage and Transfer of Gasoline	11/11/03 Revised	01/15/04

On May 19, 2000, the submittal of BAAQMD Rule 8–28 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On October 10, 2003, the submittal of MBUAPCD Rule 418 was found to meet the completeness criteria. On March 1, 2004, the submittal of VCAPCD Rule 70 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

We approved a version of BAAQMD Rule 8–28 into the SIP on December 9, 1994 (59 FR 63721). We approved a version of MBUAPCD Rule 418 into the SIP on April 23, 2002 (67 FR 19682). We approved a version of VCAPCD Rule 70 into the SIP on October 29, 2002 (67 FR 65873).

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

The purpose of revising BAAQMD Rule 8–28 relative to the SIP rule is to make the following changes:

- 8–28–114: To add a limited exemption from venting to a vapor recovery system for small refineries processing less than 20,000 barrels per day of crude.
- 8–28–200: To add nine new definitions to improve clarity.
- 8–28–302: To add a requirement that new sources meet BACT and to add a requirement to meet the Prevention Measures Procedures of 8–28–405.
- 8–28–303: To revise the five choices for compliance of existing sources down to two choices, which are to either vent to a vapor recovery system or to meet the Prevention Measures Procedures of 8–28–405.
- 8–28–304: To add the requirement to vent all devices, having a second Release Event, to a vapor recovery system.
- 8–28–401: To add additional reporting requirements for information regarding a Release Event.
- 8–28–401: To delete the requirement to maintain records of measurements for a period of two years.
- 8–28–405: To add requirements for Prevention Measures Procedures and a Process Hazards Analysis.
- 8–28–600: To revise test methods for the determination of Control Efficiency.

The purpose of revising MBUAPCD Rule 418 relative to the SIP rule is to make the following changes:

- 418.1.3.2: To require exemption from vapor recovery for delivery vessels for small facilities in operation before January 1, 1976, be requested annually by the owner instead of the owner or operator.
- 418.2.2: To add the definition of [California Air Resources Board] ARB-certified vapor recovery system.
- 418.3.1: To require that the vapor recovery system for transfer from a delivery vessel to a storage tank be ARB-certified instead of having a recovery of at least 95% of the gasoline vapors displaced.
- 418.5: To change the test method for the vapor recovery efficiency to ARB TP–202.1; the certification procedure for cargo tanks to ARB TP–204; and the static pressure and leak test procedures to ARB TP–204.1, 204.2, and 204.3.

The purpose of revising Rule 70 relative to the SIP is to remedy a deficiency in the limited approval/limited disapproval on October 29, 2002 (67 FR 65873). Offset sanctions would start on May 30, 2004, if the deficiency were not corrected. The deficiency cited and the remedy is as follows:

- [Sections H.1.c, H.2.b, H.3, and H.7.a: Reverification of the performance tests of the vapor recovery system originally required by the Executive Order should be performed more frequently. EPA recommends reverification of performance tests once every 6–12 months in order to fulfill RACT.] The reverification of performance tests frequencies have been increased. The static pressure test, dynamic pressure test, and liquid removal rate test for vapor recovery systems at all dispensing facilities exceeding 100,000 gallons per year of gasoline throughput are now required every 12 months. The air-to-liquid-volume-ratio test for vapor recovery systems at all dispensing facilities using vacuum assist are now required every 12 months. Test frequencies are less at smaller facilities.

Other revisions to improve Rule 70 are as follows:

- An obsolete compliance date was removed.
- The list of Phase II (storage tank to vehicle) vapor recovery system defects was removed from the rule and instead referenced in California Code of Regulations, title 17, section 94006, adopted November 12, 2002.
- The references to specific CARB test methods were updated.
- Any test required by the CARB Executive Order, but not by this rule, shall be performed at the frequency required by the CARB Executive Order.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), must fulfill the special requirements for gasoline vapor recovery in ozone nonattainment areas (see section 182(b)(3)(A)), and must not relax existing requirements (see sections 110(l) and 193).

The BAAQMD regulates an area designated ozone nonattainment in accordance with subpart 1, section 172(c)(1) of the CAA. This section requires that the BAAQMD in general adopt RACM that, at a minimum, includes RACT. There are no specific mandatory RACM/RACT measures for VOC that must be adopted in subpart 1. Therefore, we are evaluating that the control measures and/or control technology employed are reasonably available.

The MBUAPCD regulates an ozone maintenance attainment area (see 40 CFR part 81). The maintenance attainment plan relies on MBUAPCD Rule 418 for attainment. *See Redesignation Request and Request for Exemption from* NO_X RACT Rule Requirements for the Monterey Bay Region (March, 1994). Therefore, MBUAPCD Rule 418 must fulfill the requirements of RACT and the special requirements for gasoline recovery.

The VCAPCD regulates an area designated ozone nonattainment. Therefore, VCAPCD Rule 70 must fulfill the requirements of RACT and the special requirements for gasoline recovery.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988). (The Bluebook)
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region IX (August 21, 2001). (The Little Bluebook)
- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).
- *Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals*, EPA–450–2–77–026 (October 1977).
- *Control of VOC Leaks From Gasoline Tank Trucks and Vapor Collection Systems,* EPA–50–2–78–051 (December 1978).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, special gasoline requirements, and fulfilling RACM/RACT in general. The TSD has more information on our evaluation.

C. EPA Recommendation to Further Improve a Rule

The TSD describes an additional revision to BAAQMD Rule 8–28 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 23, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 23, 2004. This will incorporate Rule BAAQMD 8–28, MBUAPCD Rule 418, and VCAPCD Rule 70 into the federally-enforceable SIP. There are no sanction or FIP clocks associated with our previous action on BAAQMD 8–28 or MBUAPCD Rule 418. However, offset sanctions for VCAPCD Rule 70 would start on May 31, 2004, to be followed six months later by highway sanctions, if the deficiency were not remedied.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 7, 2004.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(277)(i)(C)(*8*),

(320)(i)(A)(*3*), and (328) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) * * *

(i) * * *

(C) * * *

(*8*) Rule 8–28, adopted on July 16, 1980 and amended on March 18, 1998.

* * * * *

(320) * * *

(i) * * *

(A) * * *

(*3*) Rule 418, adopted on September 1, 1974 and revised on April 16, 2003.

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(328) Amended regulations for the following APCDs were submitted on January 15, 2004, by the Governor's Designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District

(*1*) Rule 70, adopted on June 25, 1974 and revised on November 11, 2003.

* * * * *

[FR Doc. 04–11553 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0136; FRL–7358–7]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective May 24, 2004. Objections and requests for hearings must be received on or before July 23, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0136. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Contact person	Pesticide/CFR cite
Barbara Madden, *madden.barbara@epa.gov* (703) 305–6463	Carfentrazone-ethyl; 180.515 Coumaphos; 180.189 Dimethenamid; 180.464
Linda Arrington, *arrington.linda@epa.gov* (703) 305–6249	Diflubenzuron; 180.377
Stacey Groce, *groce.stacey@epa.gov* (703) 305–2505	Mancozeb; 180.176 Myclobutanil; 180.443
Andrew Ertman, *ertman.andrew@epa.gov* (703) 308–9367	S-metolachlor; 180.368 Sulfentrazone; 180.498
Andrea Conrath, *conrath.andrea@epa.gov* (703) 308–9356	Bifenthrin; 180.442 Fenbuconazole; 180.480 Indoxacarb; 180.564 Pyriproxyfen; 180.510 Thiabendazole; 180.242 Thiophanate Methyl; 180.371

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Bifenthrin*. EPA has authorized under FIFRA section 18 the use of bifenthrin on orchardgrass,forage and orchardgrass, hay for control of orchardgrass billbug in Oregon. This regulation extends time-limited tolerances for residues of the insecticide bifenthrin [(2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate] in or on orchardgrass, forage and orchardgrass, hay at 0.05 ppm for an additional 3–year period. These tolerances will expire and are revoked on June 30, 2007. Time-limited tolerances were originally published in the **Federal Register** of July 26, 2002 (67 FR 48790) (FRL–7187–8) (40 CFR 180.442).

2. *Carfentrazone-ethyl*. EPA has authorized under FIFRA section 18 the use of carfentrazone-ethyl on fruiting vegetables group 8 for control of paraquat resistant nightshade, common groundsel and morningglory in Florida. This regulation extends a time-limited tolerance for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene propanoate) and its metabolite: carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[-4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on tomato, paste at 0.60 ppm; tomato, puree at 0.60 ppm and the vegetable, fruiting, group 8 at 0.10 ppm for an additional 3–year period. These tolerances will expire and are revoked on June 30, 2007. Time-limited tolerance were originally published in the **Federal Register** of June 12, 2002 (67 FR 40203) (FRL–7178–1) (40 CFR 180.515).

3. *Coumaphos*. EPA has authorized under FIFRA section 18 the use of coumaphos in beehives for control of varroa mites and small hive beetles in Arizona, Florida, Idaho, Kansas, Oregon, and Washington. This regulation extends time-limited tolerances for combined residues of the acaricide/insecticide coumaphos (*O*,*O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (*O*,*O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphate in or on honey at 0.1 ppm and honeycomb at 100 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2007. Time-limited tolerances were originally published in the **Federal Register** of August 16, 2000 (65 FR 49927) (FRL–6738–3) (40 CFR 180.189).

4. *Diflubenzuron*. EPA has authorized under FIFRA section 18 the use of diflubenzuron on alfalfa hay and forage for control of grasshoppers and Mormon crickets in Idaho, Nevada, and Utah. This regulation extends a time-limited tolerance for residues of the insecticide diflubenzuron and its metabolites PCA (p-chloroaniline) and CPU (p-chlorophenylurea), expressed as the parent diflubenzuron in or on alfalfa hay and alfalfa forage at 6.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on June 30, 2007. Time-limited tolerances were originally published in the **Federal Register** of September 20, 2002 (67 FR 59177) (FRL–7273–7) (40 CFR 180.377).

EPA has received objections to a tolerance it established for diflubenzuron on a specific food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. EPA has considered whether it is appropriate to extend these emergency exemption tolerances for diflubenzuron while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters. EPA has published a notice describing the nature of the NRDC's objections in

more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders.

5. *Dimethenamid*. EPA has authorized under FIFRA section 18 the use of dimethenamid on dry bulb onions for control of weeds in New York and Michigan. This regulation extends a time-limited tolerance for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on dry bulb onions at 0.01 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of August 24, 2000 (65 FR 51544) (FRL–6738–1) (40 CFR 180.464).

6. *Dimethenamid*. EPA has authorized under FIFRA section 18 the use of dimethenamid on sugar beets for control of weeds in Idaho and Oregon. This regulation extends a time-limited tolerance for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on sugar beet and sugar beet tops at 0.01 ppm and on sugar beet dried pulp and sugar beet molasses at 0.05 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2007. Time-limited tolerances were originally published in the **Federal Register** of August 24, 2000 (65 FR 51544) (FRL–6738–1) (40 CFR 180.464).

7. *Fenbuconazole*. EPA has authorized under FIFRA section 18 the use of fenbuconazole on blueberry for control of mummyberry disease in Arkansas, Connecticut, Georgia, Indiana, Maine, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, and Washington. This regulation extends a time-limited tolerance for residues of the fungicide fenbuconazole and its metabolites in or on blueberry at 1.0 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of June 10, 1998 (63 FR 31633) (FRL–5791–5) (40 CFR 180.480).

8. *Indoxacarb*. EPA has authorized under FIFRA section 18 the use of indoxacarb on cranberry for control of weevils in Massachusetts. This regulation extends a time-limited tolerance for combined residues of the insecticide indoxacarb, [(*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate] and its R-enantiomer [(*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate] in or on cranberry at 0.5 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of September 18, 2002 (67 FR 58725) (FRL–7274–9) (40 CFR 180.564).

9. *Mancozeb*. EPA has authorized under FIFRA section 18 the use of mancozeb on ginseng for control of Alterneria stem and leaf blight, and Phytophthora leaf blight in Michigan, Wisconsin, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea (ETU) in or on ginseng at 2.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5) (40 CFR 180.176).

10. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on sugar beets for control of powdery mildew in Idaho and Oregon. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on dried pulp of sugar beets at 1.0 ppm, sugar beet molasses at 1.0 ppm, refined sugar from sugar beets at 0.70 ppm, sugar beet roots at 0.05 ppm, and sugar beet tops at 1.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of January 3, 2001 (66 FR 298 (FRL–6757–9) (40 CFR 180.443).

11. *Pyriproxyfen*. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on strawberry for control of whiteflies in Calilfornia. This regulation extends a time-limited tolerance for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy) ethoxypyridine] in or on strawberry at 0.3 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of November 29, 2002 (67 FR 71105) (FRL–7281–2) (40 CFR 180.510).

12. *S-metolachlor*. EPA has authorized under FIFRA section 18 the use of s-metolachlor on sweet potatoes for control of sedge weeds in Louisiana. This regulation extends a time-limited tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(*S*)-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on sweet potatoes at 0.2 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of January 3, 2003 (68 FR 274) (FRL–7283–2) (40 CFR 180.368).

13. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on flax for control of kochia and ALS-resistant kochia in North Dakota and South Dakota. This regulation extends a time-limited tolerance for combined residues of sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide, and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on flax seed at 0.20 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of August 21, 2002 (67 FR 54111) (FRL–7191–5) (40 CFR 180.498).

14. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on strawberries for control of broadleaf weeds in Washington, Oregon, Wisconsin and Michigan. This regulation extends a time-limited tolerance for combined residues of sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide, and its metabolites 3-hydroxymethyl

sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on strawberries at 0.60 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of August 1, 2001 (66 FR 39651) (FRL–6793–1) (40 CFR 180.498).

15. *Thiabendazole*. EPA has authorized under FIFRA section 18 the use of thiabendazole on lentils for control of Ascochyta blight in Idaho, Montana, North Dakota, Oregon, and Washington. This regulation extends a time-limited tolerance for residues of the fungicide thiabendazole in or on lentils at 0.1 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6) (40 CFR 180.242).

16. *Thiophanate methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on blueberry for control of fungal diseases in Connecticut, Indiana, Michigan, New Jersey, New York, Ohio, and Pennsylvania. This regulation extends a time-limited tolerance for residues of the fungicide thiophanate methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on blueberry at 1.5 ppm for an additional 3–year period. This tolerance will expire and is revoked on June 30, 2007. A time-limited tolerance was originally published in the **Federal Register** of September 12, 2002 (67 FR 57748) (FRL–7196–5) (40 CFR 180.371).

17. *Thiophanate methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on citrus fruit for control of post-bloom fruit drop in Florida and Louisiana. This regulation extends a time-limited tolerance for residues of the fungicide thiophanate methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on citrus at 0.5 ppm for an additional 3–year period. This tolerance will expire and is revoked on June 30, 2007. A time-limited tolerance was originally published in the **Federal Register** of September 12, 2002 (67 FR 57748) (FRL–7196–5) (40 CFR 180.371).

18. *Thiophanate methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on mushroom spawn for control of green mold in California, Delaware, Maryland, and Pennsylvania. This regulation extends a time-limited tolerance for residues of the fungicide thiophanate methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on mushroom at 0.01 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of February 5, 2003 (68 FR 5847) (FRL–7285–9) (40 CFR 180.371).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0136 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 23, 2004.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0136, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an

electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 11, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.176 [Amended]

■ 2. In § 180.176, in the table to paragraph (b), amend the entry for ginseng, root by revising the expiration/revocation date ''12/31/04'' to read ''12/31/06.''

§ 180.189 [Amended]

■ 3. In § 180.189, in the table to paragraph (b), amend the entries for honey and honeycomb by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.242 [Amended]

■ 4. In § 180.242, in the table to paragraph (b), amend the entry for lentil, seed by revising the expiration/

revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.368 [Amended]

■ 5. In § 180.368, in the table to paragraph (b)(2), amend the entry for sweet potato, roots by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.371 [Amended]

■ 6. In § 180.371, in the table to paragraph (b), amend the entries for blueberry and citrus by revising the expiration/revocation date ''6/30/04'' to read ''6/30/07'' and amend the entry for mushroom by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.377 [Amended]

■ 7. In § 180.377, in the table to paragraph (b), amend the entries for alfalfa, forage and alfalfa, hay by revising the expiration/revocation date ''6/30/04'' to read ''6/30/07.''

§ 180.442 [Amended]

■ 8. In § 180.442, in the table to paragraph (b), amend the entries for orchardgrass, forage and orchardgrass, hay by revising the expiration/revocation date ''6/30/04'' to read ''6/30/07.''

§ 180.443 [Amended]

■ 9. In § 180.443, in the table to paragraph (b), amend the entries for beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, refined sugar; and beet, sugar, roots by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.464 [Amended]

■ 10. In § 180.464, in the table to paragraph (b), amend the entries for beet, sugar; beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, tops; and onion, dry, bulb by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.480 [Amended]

■ 11. In § 180.480, in the table to paragraph (b), amend the entry for blueberry by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.498 [Amended]

■ 12. In § 180.498, in the table to paragraph (b), amend the entries for flax, seed and strawberry by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.510 [Amended]

■ 13. In § 180.510, in the table to paragraph (b), amend the entry for strawberry by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

§ 180.515 [Amended]

■ 14. In § 180.515, in the table to paragraph (b), amend the entries for tomato, paste; tomato, puree; and vegetable, fruiting, group 8 by revising the expiration/revocation date ''6/30/04'' to read ''6/30/07.''

§ 180.564 [Amended]

■ 15. In § 180.564, in the table to paragraph (b), amend the entry for cranberry by revising the expiration/revocation date ''12/31/04'' to read ''12/31/07.''

[FR Doc. 04–11673 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 15

[ET Docket No. 01–278; FCC 04–98]

Radio Frequency Identification

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document allows for operation of improved radio frequency identification (RFID) systems in the 433.5–434.5 MHz (''433 MHz'') band. Specifically, we are increasing the maximum permitted field strength and transmission duration for 433 MHz RFID systems used to identify the contents of commercial shipping containers in commercial and industrial areas to allow more rapid and reliable data transmission. Such improved RFID systems could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing a determination of whether tampering with their contents has occurred during shipping.

DATES: Effective June 23, 2004, except for § 15.240 which contains information collection requirements that have not been approved by the Office of Management and Budget. Written comments by the public on the new or modified information collection requirements must be submitted on or before July 23, 2004. Written comments must be submitted by the Office of Management and Budget on the information collection requirements on or before July 23, 2004. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of § 15.240.

ADDRESSES: Comments on the information collection requirements should be addressed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy should be submitted to Leslie Smith, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via Internet to *Leslie.Smith@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov,* TTY (202) 418–2989. For additional information concerning the information collection requirements, contact Leslie Smith, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0217 or via the Internet to *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order,* ET Docket No. 01–278, FCC 04–98, adopted April 15, 2004 and released April 23, 2004. The full text of this document is available on the Commission's Internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com.*

Summary of the Third Report and Order

1. In the Third Report and Order, the Commission adopted regulations to allow for operation of improved radio frequency identification (RFID) systems in the 433.5–434.5 MHz (''433 MHz'') band. Specifically, we are increasing the maximum permitted field strength and transmission duration for 433 MHz RFID systems used to identify the contents of commercial shipping

containers in commercial and industrial areas to allow more rapid and reliable data transmission. Such improved RFID systems could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing a determination of whether tampering with their contents has occurred during shipping.

2. RFID systems use radio signals to track and identify items such as shipping containers and merchandise in stores. A system typically consists of a tag mounted on the item to be identified, and a transmitter/receiver unit that interrogates the tag and receives identification data back from the tag. The tag may be a self-powered transmitter, or it may receive power from the interrogating transmitter and re-radiate an RF signal to the receiver. RFID systems can operate in a number of frequency bands under part 15 of the rules, such as the 13.110–14.010 MHz (13.56 MHz) and 902–928 MHz bands. RFID systems can also operate in the 40.66–40.70 MHz band and above 70 MHz.

3. On October 15, 2001, the Commission adopted a *Notice of Proposed Rule Making and Order,* (NPRM), 66 FR 59209, November 27, 2001, in this proceeding that proposed a number of changes to part 15 and other parts of the rules. These proposals were based on recommendations contained within the *Biennial Regulatory Review 2000 Updated Staff Report,* staff recommendations, and two petitions for rule making concerning RFID systems. The petitions for rule making were filed by the National Council for Information Technology Standardization Technical Committee B10 (''NCITS B10'') and Savi Technology, Inc. (Savi). The NCITS B10 petition requested rule changes for RFID systems operating in the 13.56 MHz band, and the Savi petition requested rule changes for RFID systems operating at 433 MHz.

4. Savi requests that the Commission modify the requirements in § 15.231 of the rules for RFID systems operating at 433 MHz. This section allows the operation of intentional radiators, including RFID systems, in the 40.66–40.70 MHz band and at any frequency above 70 MHz, except in designated restricted bands. There are two separate provisions for operation under this section. The first provision, in paragraph (a) of this rule section, contains operational requirements for devices that transmit control signals, such as those used with alarm systems, door openers and remote switches. A device operated under this paragraph must cease transmission within 5 seconds after being activated automatically or after a manually operated switch is released. Continuous transmissions such as voice and video are not permitted. Data is permitted to be transmitted with a control signal. Periodic transmissions at regular predetermined intervals are not permitted except for transmissions of not more than two seconds per hour per transmitter to verify the integrity of security transmitters in a system. The second provision, in § 15.231(e), allows any type of transmission, including data and transmissions at regular periodic intervals. However, the field strength limits for devices operating under the provisions of paragraph (e) are lower than the field strength limits for devices operating under the provisions of paragraph (a). In addition, the provisions of paragraph (e) limit transmissions to no more than one second, with a silent period between transmissions of at least 30 times the duration of the transmission, but in no case less than 10 seconds. The field strength limits for intentional radiators operating under either provision in this section are based on the average value of the measured emissions. The peak level of emissions must comply with a limit of 20 dB (ten times) higher than emission limits specified in § 15.231.

5. In the NPRM, the Commission proposed to create a new rule section for RFID systems operating in the 425–435 MHz band. The proposed rule would allow RFID tags to transmit data at the higher level normally permitted for control signals, with an average field strength of 11,000 μV/m and a peak field strength of 110,000 μV/m measured at a distance of 3 meters. Out-of-band emissions would have to meet the current limit in § 15.209. The Commission proposed to limit transmissions to 120 seconds with at least a 10 second silent period between transmissions, and to permit retransmissions in case of data errors. It also proposed to allow powered tags and readers to be approved either separately or under a single application, as proposed in the NPRM for RFID devices operating in the 13.56 MHz band. These proposals were intended to allow greater range for 433 MHz RFID systems and to allow data to be transferred from an RFID tag more quickly.

6. We are implementing these changes by adding a new rule section specifically for RFID systems operating in the band 433.5–434.5 MHz that contains the technical and operational requirements for these devices. The field strength limits will be 11,000 μV/m average and 55,000 μV/m peak, measured at a distance of 3 meters. The maximum permitted transmission duration will be 60 seconds rather than 120 seconds as proposed in the NPRM, with a ten second silent period between transmissions. While this change will result in somewhat slower data transmission speeds in cases where all the data in a device cannot be transmitted within 60 seconds, it represents a substantial improvement in speed over that which the current rules allow. In recognition of the fact that data transmission errors may occasionally occur, re-transmission of data will be permitted in case of transmission error without the need for a ten second silent period. As proposed in the NPRM, we are adopting the current out-of-band emission limits in § 15.209 for 433 MHz RFID devices because these limits have a long and successful history of controlling interference.

7. We recognize that the interference concerns raised with respect to 433 MHz RFID systems can be largely ameliorated by restricting the locations where they operate and the types of uses permitted. Such restrictions will limit the use of 433 MHz RFID systems to locations where they will not operate in close proximity to other users on the same frequency. Accordingly, we are restricting operation under the new RFID rule to the identification of the contents of commercial shipping containers. Voice communications will not be permitted. Further, we will require that operations be limited to commercial and industrial areas such as ports, rail terminals and warehouses. These requirements are essentially consistent with the conditions that Savi proposed and with which NTIA agreed that limit the types of devices and their operating locations to RFID systems used in commercial and industrial areas. We do not believe that these restrictions will inhibit the development of this technology for important homeland security applications. We are permitting two-way operation by 433 MHz RFID devices as currently allowed for remote control devices. Two-way operation will make RFID devices more useful by allowing a single device to both read data from, and write data to, remote devices. For example, an interrogator that reads data from a tag in a shipping container could also be used to update the data stored in the tag when items are added to or removed from the container. As proposed in the NPRM and consistent with our actions in the *Second Report and Order,* 68 FR 68531, December 9, 2003, for 13.56 MHz

RFID tags, we will allow 433 MHz RFID tags to be approved either as part of a system with a tag reader under one FCC identification number, or under separate FCC identification numbers. Allowing powered tags and readers to be approved together will simplify the filing requirements in cases where the devices are always sold together, and permitting tags and readers to be approved separately will provide increased flexibility to manufacturers by permitting the sale of different combinations of tags and readers.

8. In the NPRM, the Commission proposed to require that 433 MHz RFID devices be self-contained with no external or readily accessible controls that may be adjusted to cause operation out of compliance with the rules, and proposed to require that devices have permanently attached antennas that are not readily modifiable by the user. Upon further consideration, we find that it is not necessary to specify these requirements in the final rules. Section 15.15(b) already prohibits readily accessible controls that can cause a device to operate in violation of the rules. Further, § 15.203 specifies that intentional radiators must have either a permanently attached antenna or other means to prevent a user from installing an antenna that causes a device to operate in violation of the rules. Because the existing rules provide adequate safeguards against these types of changes, the proposed requirements concerning external adjustments and antenna substitutions are not necessary.

9. NTIA requested that operation of 433 MHz RFID systems be prohibited for a distance of 40 kilometers around five Federal Government radar sites to prevent harmful interference to radar operations. NTIA supplied a list of these locations and their geographic coordinates that is shown in Appendix A of the Third Report and Order. None of the five sites are within 40 kilometers of large metropolitan areas. Such a prohibition will still allow 433 MHz RFID tags to be used in the vast majority of commercial and industrial areas in the United States. In light of the need to protect government radar operations from interference, we are prohibiting 433 MHz RFID operation within 40 kilometers of these five radar sites. The coordinates of these sites are specified in rule changes.

10. Consistent with NTIA's letter stating the need to protect critical government radar operations from interference, we are requiring grantees to register the locations of users of 433 MHz RFID systems with the Commission. Registration of 433 MHz RFID systems is not a coordination, pre-approval, or licensing process, and it is not intended to give unlicensed devices protection from interference from other unlicensed devices. Rather, registration will allow the Commission and NTIA to monitor the deployment of 433 MHz RFID systems and help pinpoint the source of interference to government operations in case such interference occurs. The information that the grantee must supply to the Commission in registering the devices shall include the name, address, telephone number and e-mail address of the user, the address and geographic coordinates of the operating location, and the FCC identification number of the device. The user will be responsible for submitting updated information in the event the operating location or other information changes after the initial registration. The registration information must be submitted to the Commission's Office of Engineering and Technology at the address provided in § 15.240 of the rules. The Commission will provide this information to NTIA. As a condition of the grant, we will require the grantee of an equipment authorization for a 433 MHz RFID device to inform purchasers of the locations where the devices may and may not be used, *i.e.,* that they may be used only in commercial and industrial areas, and that they may not be used within 40 kilometers of the five Federal Government radar sites specified in the rules. We are also requiring grantees to notify users of their responsibility to register any changes in the operating location of devices or other registration information with the Commission.

11. We are also requiring grantees to register the locations of 433 MHz RFID system users as NTIA requests raises confidentiality issues for grantees. Savi states that a list of users and locations where equipment is used would likely be company sensitive information and that access should be restricted by password protection or otherwise limited to personnel at NTIA, the Department of Defense (DoD) or the Commission. We recognize Savi's concern that such a list would be commercial and/or financial information that a manufacturer would want to remain confidential because it would be the manufacturer's customer list and could indicate approximately how many units of a device have been sold. Consistent with statute, the Commission does not make certain information available for public inspection, including trade secrets and commercial and financial information that are privileged and confidential. The rules explicitly list certain types of materials in the category of trade secrets and commercial and financial information that are automatically afforded certain degrees of protection from public inspection. If material in this category is not explicitly listed as being protected from public inspection, the party submitting the material to the Commission must accompany it with a request for non-disclosure if it wants the material to remain confidential.

12. Because 433 MHz RFID registration information does not fall into a category that is explicitly listed as being protected from public inspection, the party supplying registration information would have to submit a request for confidentiality each time it files with the Commission, and the Commission would have to act upon each individual request. We expect that grantees would routinely request confidentiality for registration information filed with the Commission because they would consider this to be commercial and financial information that they do not want made available for public inspection. Each of these requests would be essentially identical and we expect that the Commission would grant them because the required registration information would fall into a category of information that the rules allow to be held confidential. Rather than process individual confidentiality requests each time a grantee registers a user's location or submits updated information, we find that it would be more efficient to adopt a change to § 0.457(d) of the rules to state that 433 MHz RFID registration information is not routinely available for public inspection. This action would save Commission resources that would be used for processing numerous confidentiality requests and would be less burdensome on grantees because grantees will not have to file a request for confidentiality each time new or updated registration information is submitted to the Commission. Therefore, we are adding 433 MHz RFID registration information to the list of materials that are automatically afforded protection from public inspection. We will, however, make this information available to NTIA, DoD or other Federal Government entities with a need for it.

13. We have made a number of adjustments from our proposal that will eliminate any significant risk of interference to garage door controls. First, we have restricted installation to use at only commercial and industrial areas for the express purpose of identifying the contents of shipping containers. Therefore, we do not anticipate widespread deployment in close proximity to door opener controls.

Further, we have narrowed the frequency range for RFID systems from the proposed 10 MHz to 1 MHz. We note that garage door controls can operate anywhere in the 425–435 MHz band where we originally proposed operation for RFIDs, thus reducing the likelihood of interference to such controls. In addition, we have reduced both the peak signal level and the maximum permitted transmission duration for 433 MHz RFID systems by a factor of two from the proposed levels, further reducing the likelihood of interference. We find the arguments that 433 MHz RFID systems would cause interference unpersuasive in any event because the signal levels proposed in the NPRM are no greater than the rules permit for garage door controls. Further, users of unlicensed devices have no protection from interference from other devices and no vested right to the continued use of any frequency by virtue of prior certification of equipment. Because operation of 433 MHz RFID systems will be limited to commercial and industrial areas such as ports, rail yards and warehouses, there will generally be substantial geographic separation between 433 MHz RFID devices and most other devices such as residential garage door openers that could receive interference. Door opener controls used in close proximity to 433 MHz RFID devices would most likely be under the control of the party operating the RFID devices, who could take appropriate steps in the event interference occurs, including changing the frequency of a door opener control, if possible, or ceasing operation of a device that causes interference.

14. We observe that any potential interference to amateur operations is mitigated for the same reasons discussed for door opener controls. ARRL expressed concern that the 425–435 MHz band originally proposed for RFID systems encompasses several bands that it has designated for weak signal use in its band plan. However, the rules we are adopting limit 433 MHz RFID systems to the 433.5–434.5 MHz band. This band is separated by 500 kHz from the nearest weak signal band listed in ARRL's band plan, thus addressing ARRL's concern about RFID operation in weak signal bands.

15. The 433.5–434.5 MHz RFID band we are adopting falls within the 433–435 MHz band that ARRL has designated for auxiliary and repeater links. Auxiliary stations are required by the Commission's rules to operate on a point-to-point basis and are permitted to operate with a maximum power of 50 watts. Because point-to-point operations typically use directional antennas, there is less likelihood of interference from other sources. The rules we are adopting for 433 MHz RFID systems reduce the peak transmit level by a factor of 6 dB (two times) from the proposal, to a level 47 dB (55,000 times) lower than the level permitted for amateur auxiliary stations, further reducing the likelihood of interference. Additionally, the rules we are adopting limit operation to commercial and industrial areas such as ports and rail yards, so operation will not be permitted in residential areas and on delivery trucks as many parties expressed concern. While there are other bands besides 433 MHz where RFID systems could operate, such as the 902–928 MHz and 2400–2483.5 MHz bands, we recognize that there are advantages to allowing operation in the 433 MHz band. Signals at lower frequencies, *i.e.,* 433 MHz, are attenuated less passing through objects, thus allowing more reliable operation. Further, although the 433 MHz band may not be available for use by unlicensed devices worldwide with the same technical parameters we are adopting for RFID systems, operation in the 433.05–434.79 MHz band is permitted in Europe, potentially allowing the development of RFID systems that are capable of operating in multiple countries.

16. We disagree with ARRL that the Commission lacks authority under § 301 of the Communications Act to authorize 433 MHz RFID devices to operate at the power levels adopted on an unlicensed basis because they will pose a significant potential for interference to licensed services. ARRL advanced a similar argument in a proceeding concerning certification of transmitters in the 24.05–24.25 GHz band. The Commission stated in that proceeding that it need not reach this statutory argument when it finds no significant interference potential. It also noted that ARRL concurs that it is appropriate for the Commission to make reasonable regulations regarding part 15 devices pursuant to § 302(a) of the Act. Because we find that the rules we are adopting for 433 MHz RFID systems will not result in an interference risk to amateur services, we reject ARRL's argument in this proceeding that the Commission lacks legal authority to adopt such rules.

Procedural Matters

17. The Third Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making and Order, Review of Part 15 and other Parts of the Commission's Rules* (NPRM).[2] The Commission sought written public comments on the proposals in the NPRM, including comment on the IRFA.[3] The Final Regulatory Flexibility Analysis conforms to the RFA.[4]

A. Need for, and Objectives of, the Third Report and Order

19. Section 11 of the Communications Act of 1934, as amended, and § 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

20. As part of the biennial review for the year 2000, the Commission reviewed its regulations pertaining to telecommunications service providers and broadcast ownership and recommended a number of changes to those rules. While not specifically required by statute, the Commission also reviewed parts 2, 15 and 18 as part of this process.

21. The Third Report and Order increases the maximum permitted field strength and transmission duration for radio frequency identification (RFID) systems operating in the 433.5–434.5 MHz band to allow more rapid and reliable data transmission. Operation of such systems is limited to commercial shipping containers in commercial and industrial areas. Improved RFID systems could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See Notice of Proposed Rule Making and Order* in ET Docket No. 01–278, 16 FCC Rcd 18205 (2001).

[3] *Id.*

[4] *See* 5 U.S.C. 604.

a determination of whether tampering with the contents has occurred during shipping.

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

22. None.

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

23. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A small business concern is one which: is independently owned and operated; is not dominant in its field of operation; and satisfies any additional criteria established by the SBA.[8]

24. The SBA has developed small business size standards for two pertinent Economic Census categories, ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment,'' both of which consist of all such companies having 750 or fewer employees.[9] According to Census Bureau data for 1997, there were a total of 1,215 establishments in the first category, total, that had operated for the entire year.[10] Of this total, 1,150 had 499 or fewer employees, and an additional 37 establishments had 500 to 999 employees.[11] Consequently, we estimate that the majority of businesses in the first category are small businesses that may be affected by the rules and policies adopted herein. Concerning the second category, the data for 1997 show that there were a total of 499 establishments that operated for the entire year.[12] Of this total, 491 had 499 or fewer employees, and an additional 3 establishments had 500 to 999 employees.[13] Consequently, we estimate that the majority of businesses in the second category are small businesses that may be affected by the rules and policies adopted in the Third Report and Order.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

25. Manufacturers of 433 MHz RFID systems will have to obtain certification for the equipment before it can be marketed. This requires the manufacturer to have the equipment tested for compliance, file an application with the Commission or a designated Telecommunication Certification Body (TCB) and wait for an approval before the equipment may be imported into or marketed within the United States. There will be no change to the certification procedure from what the rules currently require. There will be a new requirement for the grantee of certification to supply information to the Commission on where the devices are used. The information that must be submitted includes the name, address and other pertinent contact information of the user, the address and geographic coordinates of the operating location, and the FCC identification number of the device. In addition, the user of the device will have to notify the Commission of any changes to this information after the initial registration by the grantee.

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

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.[14]

27. The rules specify performance standards for RFID equipment such as emission levels, as opposed to design standards. Because the rules are intended to minimize the potential for interference to authorized services in the 433 MHz band, and it is not possible to exempt small entities from complying with any requirements without increasing the risk of harmful interference. We note that a number of entities expressed concern about the possibility of interference from 433 MHz RFID systems to door opener controls. As discussed in paragraph 23 of the Third Report and Order, we have made a number of changes from our proposals that will eliminate any significant risk of interference to door opener controls.

28. *Report to Congress:* The Commission will send a copy of the Third Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Third Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

29. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f) and 303(r), the Third Report and Order is hereby adopted. The rule changes set forth in the Third Report and Order contains an information collection requirement that has not yet been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of the Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

[5] 5 U.S.C. 604.

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] 13 CFR 121.201, NAICS codes 334220, 334290.

[10] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Radio and Television and Wireless Communications Equipment Manufacturing, ''Industry Statistics by Employment Size: 1997,'' Table 4, NAICS code 334220 (issued Aug. 1999). The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical business location is an establishment, and that location and others may be under the common ownership of a given firm. Thus, the numbers given in text may reflect inflated numbers of businesses in this category, including the numbers of small businesses. Census data in this context are available only for establishments.

[11] *Id.*

[12] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Other Communications Equipment Manufacturing, ''Industry Statistics by Employment Size: 1997,'' Table 4, NAICS code 334290 (issued Sept. 1999).

[13] *Id.*

[14] *See* 5 U.S.C. 603(c).

List of Subjects

47 CFR Part 0

Privacy, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 15 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Add new paragraph (d)(1)(vii) to § 0.457 to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(vii) Information on the users and locations of radio frequency identification systems submitted to the Commission pursuant to § 15.240 will be made available to other Federal Government agencies but will not otherwise be made available for inspection.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 4. Add § 15.240 to read as follows:

§ 15.240 Operation in the band 433.5–434.5 MHz.

(a) Operation under the provisions of this section is restricted to devices that use radio frequency energy to identify the contents of commercial shipping containers. Operations must be limited to commercial and industrial areas such as ports, rail terminals and warehouses. Two-way operation is permitted to interrogate and to load data into devices. Devices operated pursuant to the provisions of this section shall not be used for voice communications.

(b) The field strength of any emissions radiated within the specified frequency band shall not exceed 11,000 microvolts per meter measured at a distance of 3 meters. The emission limit in this paragraph is based on measurement instrumentation employing an average detector. The peak level of any emissions within the specified frequency band shall not exceed 55,000 microvolts per meter measured at a distance of 3 meters. Additionally, devices authorized under these provisions shall be provided with a means for automatically limiting operation so that the duration of each transmission shall not be greater than 60 seconds and be only permitted to reinitiate an interrogation in the case of a transmission error. Absent such a transmission error, the silent period between transmissions shall not be less than 10 seconds.

(c) The field strength of emissions radiated on any frequency outside of the specified band shall not exceed the general radiated emission limits in § 15.209.

(d) In the case of radio frequency powered tags designed to operate with a device authorized under this section, the tag may be approved with the device or be considered as a separate device subject to its own authorization. Powered tags approved with a device under a single application shall be labeled with the same identification number as the device.

(e) To prevent interference to Federal Government radar systems, operation under the provisions of this section is not permitted within 40 kilometers of the following locations:

DoD Radar Site	Latitude	Longitude
Beale Air Force Base	39°08′10″ N	121°21′ 04″ W
Cape Cod Air Force Station	41°45′07″ N	070° 32′17″ W
Clear Air Force Station	64°55′16″ N	143° 05′02″ W
Cavalier Air Force Station	48° 43′12″ N	097° 54′00″ W
Eglin Air Force Base	30° 43′12″ N	086° 12′36″ W

(f) As a condition of the grant, the grantee of an equipment authorization for a device operating under the provisions of this section shall provide information to the user concerning compliance with the operational restrictions in paragraphs (a) and (e) of this section. As a further condition, the grantee shall provide information on the locations where the devices are installed to the FCC Office of Engineering and Technology, which shall provide this information to the Federal Government through the National Telecommunications and Information Administration. The user of the device shall be responsible for submitting updated information in the event the operating location or other information changes after the initial registration. The grantee shall notify the user of this requirement. The information provided by the grantee or user to the Commission shall include the name, address, telephone number and e-mail address of the user, the address and geographic coordinates of the operating location, and the FCC identification number of the device. The material shall be submitted to the following address:

Experimental Licensing Branch, OET, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, ATTN: RFID Registration.

[FR Doc. 04–11537 Filed 5–21–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 051704B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #1 - Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to close at midnight on Wednesday, May 5, 2004. This action was necessary to conform to the 2004 management goals. The intended effect of this action is to allow the fishery to operate within the seasons and quotas as specified in the 2004 annual management measures.

DATES: Closure in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 2359 hours local time (l.t.), May 5, 2004, after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through June 8, 2004.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004oceansalmonIA#1.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments and include the docket number in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to close at midnight on Wednesday, May 5, 2004. On May 5 the Regional Administrator determined that available catch and effort data indicated that the quota of 29,300 chinook salmon would be reached by midnight. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open May 1 through the earlier of June 30 or a 29,800 chinook quota. The fishery would be managed to provide a remaining quota of 500 chinook for a June 26 through 30 open period with a 50–fish, per vessel, landing limit for the 5–day open period. The resulting quota for the first part of the May-June fishery is 29,300 chinook.

On May 5, 2004, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached by Wednesday, May 5, 2004. As a result, the states recommended, and the Regional Administrator concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR close effective at midnight on Wednesday, May 5, 2004. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time this action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, taking the time to provide notice and comment would have allowed the fishery to exceed the quota. One consequence of exceeding the quota is that the previously scheduled June 26–30 fishery would have to be canceled. A separate quota of 500 chinook was set aside for this fishery to take advantage of the market opportunities prior to a holiday weekend. Another consequence of exceeding the quota is that the previously scheduled July 8 - September 15 fishery would also be reduced or cancelled. A separate guideline of 14,700 chinook was set aside for this fishery to provide access to a quota of 67,500 coho during the summer season. Exceeding the quota in the May-June fishery would therefore reduce or eliminate the opportunity to catch harvestable coho. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: May 18, 2004.

Galen R Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–11664 Filed 5–21–04; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 03–022–3]

RIN 0579–AB81

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to allow the distribution of the avocados during all months of the year. To reflect these proposed changes, we would also make other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States. We are proposing this action in response to a request from the Government of Mexico and based on our finding that the phytosanitary measures described in this proposed rule will reduce the risk of introducing plant pests associated with Mexican Hass avocados into the United States.

DATES: We will consider all comments that we receive on or before July 23, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–022–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–022–3.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–022–3'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in 7 CFR 319.56–2ff (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States, subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (October 15 through April 15) that shipments may enter the United States, are designed to reduce the risk of pest introduction. Further, the regulations limit the distribution of the avocados to 31 northeastern and north central States (Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming) and the District of Columbia.

In November 2000, the Government of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow Hass avocados to be imported year round into all 50 States. We did not act on Mexico's request at the time because we did not have documentation available to support Mexico's position that such importations would not present a risk of introducing plant pests into certain States.

As part of our evaluation of Mexico's request, we prepared a draft pest risk assessment (PRA), titled ''Importation of 'Hass' Avocado Fruit (*Persea americana*) from Mexico'' (June 2003), to evaluate the importation of fruit to the entire United States throughout the year. The draft PRA contained two components: (1) A risk assessment component that identifies quarantine pests that are likely to follow the Mexican Hass avocado import pathway, and (2) a risk management component that evaluates the ability of the selected phytosanitary measures to mitigate the risk posed by those quarantine pests.

The first component revealed that the quarantine pests of concern remained the same as those identified in previous risk assessments. After eliminating non-quarantine and non-pathway pests from the list, eight pests of quarantine significance that follow the pathway remain: Three fruit flies (*Ceratitis capitata, Anastrepha ludens, A. striata*),

three seed weevils (*Conotrachelus aguacatae, C. perseae,* and *Heilipus* lauri), one stem weevil (*Copturus aguacatae*), and one seed moth (*Stenoma catenifer*).

The second component of the draft PRA evaluated the phytosanitary measures that would be applied under this proposed rule (described in detail later in this document). This component concluded that imports of Mexican avocados subject to the phytosanitary requirements described in this proposed rule would result in the following:

- Fewer than 387 infested avocados will enter the United States each year, estimated with 95 percent confidence.
- Fewer than 49 avocados infested with stem weevil, seed weevils, and seed moth will enter avocado producing areas each year, estimated with 95 percent confidence.
- Fewer than 143 avocados infested with fruit flies will enter fruit fly susceptible areas each year, estimated with 95 percent confidence.
- Fewer than 3 avocados infested with stem weevil, seed weevils and seed moth will be discarded in avocado producing areas each year, estimated with 95 percent confidence.
- Fewer than 8 avocados infested with fruit flies will be discarded in fruit fly susceptible areas each year, estimated with 95 percent confidence.
- There is an overall low likelihood of pest introduction.
- Based on the statistical models we have used to estimate sampling efficacy, it is slightly more likely that zero infested avocados will enter the United States than one infested avocado, however, we cannot rule out the possibility that some may enter the country.

Only those avocados discarded in susceptible areas pose a risk of establishment of the pests in the United States. In the PRA, the risk associated with the importation of commercial shipments of avocados is compared to the risks associated with infested avocados smuggled into the United States. During the 17-year period from 1985 to 2002, an average of 30 avocados infested with pathway pests were intercepted and denied entry into the United States each year. Studies of port efficiency, when searching for prohibited materials, indicates that inspectors detect approximately 10–20 percent of what actually arrives. That suggests that an estimated average 150 to 300 infested avocados are introduced each year through baggage and cargo. During the period 1985 to 2002, 502 pathway pests were detected in intercepted avocados (specific variety or cultivar not recorded) that were found in baggage and cargo. During the same period, 24,283 tephritid larvae were intercepted at the Mexican border in all types of fruit, most of it from baggage. Therefore, prohibited transport of avocados in baggage and cargo pose a substantially greater risk of introducing the above pests into the United States than commercial imports of Hass avocados from Mexico.

Additionally, APHIS has 6 years worth of data from the avocado import program, which gives us confidence that the systems approach currently in place provides adequate safeguards against avocado pests. The systems approach mitigations include annual pest field surveys; orchard certification; and packinghouse, packaging, and shipping requirements. The efficacy of the systems approach depends on redundant measures. Those measures are backed up by an inspection system that, when a pest is detected, shuts down the imports from an affected area, depending on the pest, until corrective actions are taken. An examination of over 10 million fruit has not revealed any pests in 6 years of fruit cutting and inspection.

On June 16, 2003, we published a notice in the **Federal Register** (68 FR 35619, Docket No. 03–022–1) in which we advised the public of the availability of the draft PRA. We solicited comments for 60 days. On August 14, 2003, we published another notice in the **Federal Register** (68 FR 48595–48596, Docket No. 03–022–2) in which we extended the comment period on the pest risk assessment until September 15, 2003.

We received 291 comments by that date. Based on some of those comments, we have made changes to the PRA. Those changes are described in Appendix G of the revised PRA. APHIS will accept additional comments on the revised PRA throughout the comment period for this proposed rule. The revised PRA, titled ''Importation of Avocado Fruit (*Persea americana* Mill. var. 'Hass') from Mexico'' (February 17, 2004) can be viewed on the Internet at *http://www.aphis.usda.gov/ppq/avocados/,* or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule).

In the past, fruit flies (*Anastrepha* spp.) have been a major concern and a key focus of previous risk analyses. The PRA cites recent research conducted under laboratory conditions that prompted a reevaluation of the potential of *Anastrepha* spp. to infect Hass avocados. Based on this research, the Department's Agricultural Research Service concluded that commercially produced Hass avocados are very poor hosts for the *Anastrepha* spp. considered. Moreover, Hass avocados produced and exported using the systems approach described in this document have a low likelihood of being a pathway for *Anastrepha* spp. fruit flies and other quarantine pests.

As described in the PRA, even if an infested avocado were to arrive in an area of the United States where host material was present, several additional conditions are required for pest establishment:

- The pest must survive in the avocado during transportation and storage;
- The infested avocado must be discarded in close proximity to host material;
- The pest must find a mate;
- The pest must successfully avoid predation and other threats;
- The adult pest must find appropriate host material; and
- Suitable climatological and microenvironmental conditions must exist.

Although information that would allow quantifying these conditions is not currently available, the PRA concludes that collectively they substantially reduce the likelihood of pest establishment and the overall level of risk.

The phytosanitary measures in the systems approach are designed to reduce the risk posed by the identified pathway pests. The effectiveness of this approach is evident from the failure to detect arthropods in even one avocado in the commercial pathway to the United States, despite very large samples and continuous, concerted survey and detection efforts. Further, avocado importations during the last 6 years have provided APHIS with valuable experience managing the systems approach.

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of Hass avocados from Mexico subject to the phytosanitary requirements described in this proposed rule in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings

of the risk assessment referred to earlier in this document, and the Secretary's judgment that the application of the measures required under § 319.56–2ff would prevent the introduction or dissemination of plant pests into the United States.

Based on the Secretary's determination, and in response to the Mexican Government's request, we are proposing to amend the regulations to expand, from 31 to 50, the number of States (plus the District of Columbia) in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to allow the distribution of the Hass avocados during all months of the year. The proposed expansion of the Mexican Hass avocado import program would necessitate several other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States.

Limited Distribution

We are considering instituting a limited distribution plan that would delay the entry of Hass avocados from Mexico into commercial avocado-producing areas in the United States for up to 1 full year. This would mean that the importation and distribution of Mexican Hass avocados would continue to be prohibited into and within California, Florida, and Hawaii during the limited distribution period. This delay would provide an opportunity for the efficacy of the proposed regulations to be demonstrated under actual production and distribution conditions for up to 1 full year before Mexican Hass avocado imports would be allowed to enter commercial avocado-producing areas of the United States. We invite the public to submit information demonstrating whether or not this measure is warranted.

Proposed Changes

Shipping Restrictions

In § 319.56–2ff, paragraph (a), ''Shipping restrictions,'' currently provides that the avocados may be imported in commercial shipments only, that they may be imported only between October 15 and April 15 of the following year, and that they may be distributed only in the approved States listed earlier in this proposed rule.

Under this proposed rule, we would allow the avocados to be imported during all months of the year, and would expand the number of States in which the avocados may be distributed.

To make these proposed changes in the regulations, we would remove § 319.56–2ff(a)(2), which limits imports to the period between October 15 and April 15. We would also remove the list of approved States in § 319.56–2ff(a)(3), and would amend the title of the section, the introductory text of the section, and current paragraph (i) by removing references to ''approved States'' since the avocados would be distributed in all areas of the United States.

Safeguards in Mexico

In § 319.56–2ff, paragraph (c), ''Safeguards in Mexico,'' currently provides specific municipality, orchard and grower, and packinghouse requirements that must be met in order for the avocados to be eligible for entry in the United States. While this paragraph would remain largely the same under this proposed rule, we are proposing several changes.

Throughout the paragraph, as well as in paragraphs (d) and (e), we would remove the current references to Sanidad Vegetal, which is Mexico's national plant protection organization (NPPO), and replace them with a more generic reference to ''the Mexican NPPO.'' Similarly, we would amend the introductory text of paragraph (c), which refers to ''the Michoacan State delegate of the Secretaria de Agricultura, Ganaderia y Desarrollo Rural (SAGDR),'' so that it simply refers to ''the Michoacan State delegate of the Mexican NPPO.'' Finally, in paragraphs (c)(2)(v) and (c)(3)(vi), we would replace references to a ''Sanidad Vegetal registration number'' with references to an ''official registration number.'' Referring to the NPPO generally, rather than by name, is consistent with the terminology used in the International Plant Protection Convention (IPPC) and would preclude the need to amend the regulations should the specific name of Mexico's NPPO change in the future.

The municipality requirements in paragraph (c)(1) currently require that municipalities be surveyed at least annually and found to be free from the large avocado seed weevil *Heilipus lauri*, the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.* These surveys must be conducted during the growing season and completed prior to the harvest of the avocados. Because we are proposing to allow the avocados to be imported into the United States during all months of the year, we are proposing to require semiannual, rather than annual, surveys for those pests. The currently required pre-harvest survey, which is a wet season survey that normally occurs between July and September of each year, provides a good opportunity to detect fruit fly larvae, seed moth larvae, and adult stem weevils. To that we would add a second survey that would be conducted approximately 6 months later (starting in January) during the dry season, which would provide a good opportunity to detect stem weevil larvae in branches and fruit and seed moth larvae at the early point of flowering and at the decline of the peak harvest period.

As part of this proposed change, we would remove the specific instructions in paragraph (c)(1)(ii) that the survey must cover at least 300 hectares in the municipality and include randomly selected portions of each registered orchard and areas with wild or backyard avocado trees as well as the requirements regarding the timing of the surveys. As the surveys themselves are required by the regulations, we believe that it is appropriate to leave the details of how and when the surveys are to be conducted to the annual work plan. The regulations require that the work plan, which is prepared by the Mexican NPPO, be approved by APHIS, and that APHIS will be directly involved in the monitoring and supervision of the activities covered by the work plan. APHIS would ensure that the surveys would be conducted in a manner that is consistent with the text of the current regulations.

Like the municipality requirements discussed above, the orchard and grower requirements in paragraph (c)(2) currently require an annual inspection, in this case for the avocado stem weevil *Copturus aguacatae.* The survey must be conducted during the growing season and completed prior to the harvest of the avocados. For the same reasons as discussed above with respect to the municipality surveys, we are proposing to amend the regulations to require semiannual, rather than annual, orchard surveys for the avocado stem weevil. Our experience has shown that the period between May and July is an opportune time to detect seed weevil adults, and seed weevil larvae can be most readily detected during the November through April time period. As with the municipality surveys, the survey requirement itself would remain in the regulations, while the details of conducting the surveys would be addressed in the annual work plan. The details specified in the work plan would be consistent with those currently in the regulations.

In the packinghouse requirements of paragraph (c)(3), paragraph (c)(3)(iv) states that prior to the culling process, a sample of 300 avocados per shipment must be selected, cut, and inspected and found free from pests. We are proposing to remove the specific sample size of 300 fruit and replace it with a requirement for a biometric sample at a rate determined by APHIS. We set the current 300 fruit figure, which is itself a biometric sample, to reach the 95 percent confidence level of detecting a 1 percent infestation for each shipment. (The actual sample number that we determined when using the 95 percent confidence level of detecting a 1 percent level of infestation ranged from 258 to 288 fruit for shipments ranging from 1,000 to 4,000 fruit, but we rounded up to 300 at the beginning of the program.) This figure, however, does not allow us the flexibility to make adjustments that may be indicated by our monitoring of field conditions in the growing area. We have therefore determined that a biometric sample size as large as 300 fruit will be sampled from each shipment. Production areas and orchards with a past history of negative pest finds may have fewer then 300 fruit sampled. Thus, by requiring a biometric sample rather than a set 300 fruit, we would have the flexibility to adjust sample sizes as appropriate.

Also, in this paragraph, as well as several other places in the regulations, we would replace the term ''shipment'' with ''consignment.'' ''Consignment'' is a term that is defined in the context of international trade agreements, whereas ''shipment'' is not. (*Consignment* is defined in the IPPC's Glossary of Phytosanitary Terms as ''a quantity of plants, plant products and/or other regulated articles being moved from one country to another and covered by a single phytosanitary certificate [a consignment may be composed of one or more lots].'')

The packinghouse provisions in paragraph (c)(3)(vii) require that all boxes or crates of avocados be clearly marked with, among other things, the statement ''Not for distribution in AL, AK, AZ, AR, CA, FL, GA, HI, LA, MS, NV, NM, NC, OK, OR, SC, TN, TX, WA, Puerto Rico, and all other U.S. Territories.'' To reflect the proposed expansion of the avocado import program into all areas of the United States, we would remove that requirement.

Paragraph (c)(3)(viii) requires that, prior to leaving the packinghouse, the truck or container transporting the avocados must be secured by Sanidad Vegetal with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it reaches the port of first arrival in the United States. We are proposing to replace the requirement for seals with a requirement for the avocados to be packed in insect-proof cartons, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin prior to leaving the packinghouse. We believe that these safeguards, which would have to be intact when the avocados arrive at the port of first arrival in the United States, would provide the necessary protection from pest infestation for avocados as they transit Mexico en route to the United States. This proposed change from sealed conveyances to safeguarding containers is not considered in the PRA. However, we believe this change would provide for an equal, if not greater degree of protection against the infestation of harvested avocados by fruit flies. Requiring the use of insect-proof coverings would help ensure that the fruit remains protected from infestation during all phases of transit, including those times when Mexican authorities inspect for illegal drugs and other contraband.

Pest Detection

In § 319.56–2ff, paragraph (e), ''Pest detection,'' provides that if the stem weevil *Copturus aguacatae* is detected in an orchard or in fruit at a packinghouse, the orchard where the pest was found or where the infested fruit originated will lose its export certification immediately and will be denied export certification for the entire shipping season of October 15 through April 15. Because we are proposing to allow the importation of avocados during all months of the year, the language regarding the shipping season would no longer be applicable. We would, therefore, amend paragraphs (e)(2) and (e)(3) to provide that the orchard would lose its export certification immediately and that avocado exports from that orchard would be suspended until APHIS and the Mexican NPPO agreed that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated. This is the approach currently applied under paragraph (c)(1) when specified pests are detected within a municipality, and we believe that it can be effectively employed at the orchard level as well.

Ports

In § 319.56–2ff, paragraph (f), ''Ports,'' currently provides that the avocados may enter the United States only at certain ports, *i.e.:*

- Any port located in an approved State;
- The ports of Galveston or Houston, TX, or the border ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX; or
- Other ports within that area of the United States specified in § 319.56–2ff(g).

These port of entry limitations were intended to work in concert with the shipping area provisions of § 319.56–2ff(g) described below to ensure that the avocados were moved by the most direct route from the U.S./Mexican border to the approved States where they may be distributed. Because we are proposing to remove the distribution restrictions on the avocados once they have entered the United States, port of entry limitations of paragraph (f) would no longer be necessary. Therefore, we are proposing to remove § 319.56–2ff(f).

Shipping Areas

In § 319.56–2ff, paragraph (g), ''Shipping areas,'' currently describes the areas of the United States that avocados moving by truck or rail car may transit while en route to approved States. This transit corridor was established to ensure that the avocados were moved by the most direct route from the U.S./Mexican border to the approved States where they may be distributed. Given that we are proposing to remove the distribution restrictions on the avocados once they have entered the United States, shipping area provisions of paragraph (g) would no longer be necessary. Therefore, we are proposing to remove § 319.56–2ff(g).

Shipping Requirements

In § 319.56–2ff, paragraph (h), ''Shipping requirements,'' currently provides that the avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in a refrigerated container on a truck or rail car. If the avocados are moved in a refrigerated container on a truck or rail car, an inspector must seal the container with a serially numbered seal at the port of first arrival in the United States. If the avocados are moved in a refrigerated truck or a refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of first arrival in the United States. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The

avocados must be moved through the United States under Customs bond.

As discussed previously, we are proposing to require that the avocados be packed, at the packinghouse in Mexico, in insect-proof cartons or covered with insect-proof mesh or a plastic tarpaulin, and that those safeguards must remain intact upon the arrival of the fruit in the United States. These proposed safeguards would ensure that the packed fruit is protected from pest infestation as it is moved in a refrigerated truck or refrigerated container through Mexico. Given that we are proposing to remove the distribution restrictions on the avocados once they have entered the United States, shipping requirements of paragraph (h) would no longer be necessary. Therefore, we are proposing to remove § 319.56–2ff(h).

Inspections

In § 319.56–2ff, paragraph (i), ''Inspections,'' currently provides that the avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

We would amend these provisions by removing the references to inspections while the avocados are en route to approved States and at terminal markets in approved States, as such references would not be necessary with the proposed expansion of the number of States in which the avocados could be distributed. Also in this paragraph, we would replace the term ''shipment'' with ''consignment'' as discussed above.

Finally, to reflect the proposed removal of paragraphs (f), (g), and (h) discussed above, we would redesignate paragraph (i) as paragraph (f).

Repackaging and Compliance Agreements

In a final rule effective January 5, 2000, and published in the **Federal Register** on December 6, 1999 (64 FR 68001–68005, Docket No. 99–020–2), we amended the regulations to require handlers and distributors to enter into compliance agreements with APHIS and added requirements regarding the repackaging of the avocados after their entry into the United States. We made those changes to ensure that distributors and handlers were familiar with the distribution restrictions and other requirements of the regulations and to ensure that any boxes used to repackage the avocados in the United States would bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico. The provisions regarding repackaging are found in current paragraph (j) of the regulations, and the compliance agreement provisions are in paragraph (k). Because those provisions were intended to reinforce the limited distribution safeguards of the avocado import program, we believe that they would no longer be necessary in light of the proposed expansion of the Mexican avocado import program. Therefore, we are proposing to remove paragraphs (j) and (k) of § 319.56–2ff.

While we believe that the repackaging provisions of paragraph (j) are no longer necessary for the purpose they were originally intended—*i.e.*, to reinforce the limited distribution safeguards of the avocado import program—we do believe that they may be of use were it to become necessary, for any reason, to trace repackaged avocados back to the packinghouse from which they were shipped or the orchard in which they were grown. In addition, we note that other commodities subject to the regulations are required to be packed in boxes that must be marked with specific information such as has been required for Mexican avocados. For example, under § 319.56–2(g), each box of fruit or vegetables imported into the United States in accordance with § 319.56–2(e)(3) or (4) and § 319.56–2(f) must be clearly labeled with the name of the orchard or grove of origin, or the name of the grower; the name of the municipality and State in which it was produced; and the type and amount of fruit it contains. Similarly, under § 319.56–2t, boxes of papayas from Belize must be marked ''Not for importation into or distribution within HI.''

In order to facilitate the traceback of fruits or vegetables when necessary, we believe that it would be useful to apply the repackaging requirements described in paragraph (j) to all imported plants and plant parts covered under part 319, such as Mexican avocados or the papayas from Belize cited above. Therefore, we are planning to publish a separate proposed rule that would add a general repackaging requirement to the regulations in ''Subpart—Imported Plants and Plant Parts'' (§§ 301.10 and 301.11), which addresses the interstate movement of imported articles that are subject to distribution restrictions under part 319. Because this proposed change would affect numerous other commodities in addition to avocados, we will address this change in a separate rulemaking in order to give all potentially affected entities a meaningful opportunity to comment.

Other Proposed Changes

Elsewhere in the fruits and vegetables regulations, § 319.56–2bb, ''Administrative instructions governing movement of Hass avocados from Mexico to Alaska,'' provides for the importation into Alaska of Hass avocados grown in Michoacan, Mexico. With the proposed expansion of the Mexican avocado import program, we believe it is no longer necessary to have a separate section pertaining specifically to the importation of Hass avocados from Mexico into Alaska during all months of the year. Therefore, we would remove and reserve § 319.56–2bb.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis. The economic analysis contains cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis that considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. In addition, the full analysis may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/avocados/* or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

Summary of Economic Analysis

This analysis addresses economic impacts of a proposed rule that would allow fresh Hass avocados from Mexico to be imported into all States of the United States throughout the year. APHIS is proposing this action at the request of the Government of Mexico. Economic effects of the rule are analyzed as required by Executive Order 12866. Possible impacts on small entities are considered in accordance with the Regulatory Flexibility Act.

Economic effects of allowing Hass avocados from Mexico to be imported into all States year-round are analyzed using a static, partial equilibrium model. The model has three demand regions: 31 northeastern and central States (and the District of Columbia) currently approved to receive Hass avocado imports from Mexico during the 6-month period October 15–April 15 (Region A); 16 Pacific and southern States, excluding California and Florida, not approved to receive Hass avocados from Mexico (Region B); and California and Florida (Region C). Separation of California and Florida into a third region is based on their much higher per capita demand for Hass avocados compared to other States.

There are three supply regions in the model: California, Mexico, and Chile. Nearly all U.S. Hass avocado production takes place in California. Over 96 percent of all Hass avocado imports are supplied by Chile and Mexico. Two time periods are specified in the model, given the current 6-month restriction on Hass avocado imports from Mexico: October 15–April 15 (Period 1) and April 16–October 14 (Period 2). Throughout the following discussion, ''avocado'' refers only to fresh Hass avocados unless otherwise indicated.

With respect to pest risks, a systems approach currently in place provides redundant safeguards against pest introduction. Risk mitigation measures include pest field surveys; orchard certification; and packinghouse, packaging, and shipping requirements. Since shipments into the conterminous United States began in 1997, cutting and inspection of over 10 million Mexican avocados has not revealed any quarantine pests.

The proposed rule includes certain changes in the risk mitigations. In the approved orchards in Michoacén, Mexico, surveys for the quarantine pests of concern would be increased from annually to semiannually, given that the avocados would be allowed to be imported throughout the year. In the packinghouses, a sample of 300 avocados per consignment currently must be selected, cut, and inspected and found free from pests. APHIS is proposing to remove the specific sample size of 300 fruit and replace it with a requirement for a biometric sample at a rate determined by APHIS and based on field conditions in the growing area. Consignments of avocados would no longer need to be officially sealed before shipment, but rather would be required to be packed, at the packinghouse in Mexico, in insect-proof cartons or covered with insect-proof mesh or a plastic tarpaulin that must remain intact upon arrival of the avocados in the United States. Ports-of-entry and transit pathways would no longer be restricted, since access would be allowed to all States. Repackaging requirements specific to Mexican avocados after they enter the United States would be replaced by general repackaging requirements for imported plants and plant parts. Costs related to any of these changes are expected to be small and not significantly influence the supply of Mexican avocados. Costs associated with risk mitigation changes in Mexico would be borne by Mexican entities.

The Model

The analysis is based on a set of equations that describe, on the demand side, avocado consumption in the United States, and on the supply side, foreign and domestic avocado production for the U.S. market. Demand for avocados in the model is derived from a weakly separable utility function for a representative consumer. The utility function is assumed to contain two partitions of all goods purchased by consumers: Avocados and everything else. In addition, avocados produced in each of the three supply regions are assumed to be heterogeneous products, based on observed wholesale price differentials. A nested constant elasticity of substitution (CES) utility function is used. The main advantage of this functional form is the minimal number of parameters needed to make the model operational. A major disadvantage of the CES utility function is that income elasticities can only equal 1.

On the supply side, a constant elasticity of transformation (CET) production possibility frontier is used to capture the option of producers to leave ripe avocados on the tree and shift their sale between time periods as relative prices change. Like the CES utility function, the main advantage of the CET function is that it is parsimonious in the parameters. Only a single, constant elasticity of transformation must be chosen in order to apply this functional form.

Initial quantities and prices used as the baseline for the model are averages for the 2-year period October 15, 2000, to October 15, 2002. Constant elasticities of substitution and transformation are specified, based on demand and supply elasticities derived from the literature, namely: A wholesale-level price elasticity of demand for California of -0.96, an aggregated wholesale-level price elasticity of demand of -0.67, and a price elasticity of supply for California of 0.35. The elasticities of substitution and transformation are then applied to the model's demand and supply equations to replicate the baseline quantities and prices, yielding shift parameter values. The equations are then resolved using different shift parameters to account for the greater access to U.S. markets afforded avocado imports from Mexico under the proposed rule. Resulting changes in prices and quantities provide the basis for approximating welfare impacts for avocado consumers and producers in the United States, and effects for small entities.

Shift parameters for avocados from Mexico have initial zero values in Regions B and C (Pacific and southern States) at all times and in Region A (northeastern and central States) during Period 2. Without adjusting these parameters, the model cannot show the effect on U.S. avocado demand of allowing Mexican avocados year-round access to all States. This raises the question of what this adjustment should be. Changes in the shift parameters can be thought of as changes in non-price influences on the relative demand for avocados. Even if avocados from the three supply regions were equal in price, demand for them would not be the same because of consumers' perceptions and preferences.

We assume that with removal of import restrictions, shift parameter values for avocados from Mexico that are initially zero can be set equal to the shift parameter values for Chilean avocados, by demand region and time period. In other words, consumers' preference for Mexican avocados would be the same as their preference for Chilean avocados. This adjustment rule may overstate this effect for Mexican avocados with respect to California avocados, and understate the effect with respect to Chilean avocados. Changes in demand for California avocados (and impacts for California producers) estimated by the model may therefore be larger than would be the case if newly available avocados from Mexico were to result in a decline in the shift parameter

not only for California avocados, but for Chilean avocados as well.

Another basis for adjustment of the shift parameters would be to equate them to the initial parameter values for Region A during Period 1: Approximately 0.39 for California, 0.14 for Chile, and 0.47 for Mexico. However, applying these shift parameters to Region A in Period 2 and to Regions B and C in both time periods would result in an even larger increase in Mexico's supply and decrease in the supply by California's producers than is shown by the analysis. Moreover, Region A during Period 1 is the demand region and time period of least importance to California's producers, whereas most of Mexico's worldwide avocado exports occur during the October 15 to April 15 time period.

We invite public comment on the basis by which we adjust the shift parameters for this analysis. We welcome suggestions of other possible adjustment rules.

In the model, California producer prices are free on board (FOB) prices reported by the California Avocado Commission. Chilean and Mexican producer prices are cost insurance freight (CIF) import values reported by USDA's Foreign Agricultural Service. ''Producer'' prices refer in all cases to the FOB and CIF values.

Currently, Mexico is exporting to the United States a fraction of the avocados that could be exported from approved orchards and municipalities in the State of Michoacán. An estimated 479 million pounds of fresh avocados could be certified for export to the United States. During the baseline period, imports from Mexico totaled approximately 64.2 million pounds, or 13.4 percent of what potentially could be certified for export to the United States. It is apparent that Mexican producers could readily expand their level of exports to the United States at the current price level. Compared to an average wholesale price during the baseline period in the United States of $1.14 per pound, the average wholesale price in Mexico in 2001 was $0.46 per pound, and in 2002, $0.37 per pound. We assume in the model that the export supply of avocados from Mexico is perfectly elastic, and that the price Mexico's producers receive for their exports is constant (or fixed). We recognize that, in reality, prices in Mexico are not constant, and that this assumption results in a larger level of avocado imports from Mexico than if their demand were modeled as price-responsive. However, price changes are likely to be very small as long as there are large quantities of avocados that meet requirements for sale in the United States but are consumed domestically within Mexico or are exported elsewhere.

Effects on Supply and Demand

Impacts on quantities and prices are shown in table 1. Overall, U.S. avocado consumption under the proposed rule would increase by 10.4 percent. Quantities supplied by California and Chile would decline by 9.5 percent and 8.9 percent, respectively, while imports from Mexico would increase to nearly 3.7 times their initial level, from 38.5 million pounds to over 141 million pounds.

Given producers' inelastic supply, the decline in price is of greater significance for California producers than is the decline in the quantity supplied. California's prices would fall by 15.4 percent at the wholesale level and by 25.6 percent at the producer level. Price impacts for avocados supplied by Chile would be much smaller, since their initial price is closer to that of avocados from Mexico.

Effects by demand region, supply region, and time period are provided by the model. Two-thirds of avocado imports from Mexico under the proposed rule would enter during Period 1. In Regions B and C during Period 1, avocados from Mexico would displace 30 percent and 23 percent of the avocados that had been supplied by California.

Because overall demand for avocados from California and Chile would decrease in both time periods, wholesale and producer prices for avocados from California and Chile also would decrease in both time periods. Imports from Mexico during Period 1 would comprise a larger share of total avocado consumption and therefore would exert greater downward pressure than during Period 2 on prices of avocados supplied by California and Chile.

TABLE 1.—SUMMARY OF CHANGES IN QUANTITIES AND PRICES[1]

	Initial prices and quantities[2]	With rule[3]	Change	Percentage change
Quantity (millions of pounds)				
Total	537.643	593.785	+56.142	+10.4
Supplied by:				
California	376.629	340.895	−35.734	−9.5
Chile	122.564	111.715	−10.849	−8.9
Mexico	38.450	141.174	+102.724	+267.2
Wholesale price of avocados (in dollars per pound) supplied by:				
California	$1.49	$1.26	−$0.23	−15.4
Chile	$1.24	$1.16	−$0.08	−6.5
Producer price for:				
California	$0.90	$0.67	−$0.23	−25.6
Chile	$0.52	$0.45	−$0.07	−13.5

[1] Prices weighted by regional and time period quantities.
[2] Baseline.
[3] Effects of the rule on quantities and prices (simulation results).

Welfare Effects

Price and quantity changes described by the model translate into the welfare changes for U.S. avocado consumers and producers are shown in table 2. For consumers, the concept of equivalent variation is used to quantify these changes. Equivalent variation (EV) refers to the additional amounts of income measured at initial equilibrium prices that would be equal to the price and quantity changes from removing the restrictions on the importation of avocados from Mexico.

Under the proposed rule, the decrease in California avocado prices due to producers' inelastic supply response would result in large gains in consumer

utility. EV across all regions and time periods would total $115.3 million. Not surprisingly, consumers in Region A in Period 1 would gain the least, since this is the region already approved to receive avocados from Mexico. Consumer gains in Regions B and C would be similar for both time periods.

Welfare impacts for avocado producers in California and Chile are determined by computing changes in producer surplus based on their avocado factor endowment supply curves. A fall in producer prices will decrease the amount of factor endowment employed in avocado production. Given the decline in producer prices, California avocado producers would experience welfare losses equivalent to $84.5 million. Chile's suppliers would lose producer surplus equivalent to $8.5 million.

The net change in U.S. welfare is computed by subtracting the loss in producer surplus for California producers from the total EV. As shown in table 2, the net welfare gain would be $30.8 million.

A sensitivity analysis was conducted of the changes in avocado supply and demand and changes in consumer and producer welfare, in recognition of the uncertainty surrounding parameters and exogenous variables such as the demand and supply elasticities. The results of the sensitivity analysis for the welfare effects are given in the mean and standard deviation columns in table 2. Relative to the baseline and mean values, the standard deviations for the EV values are small, suggesting that the parameters and exogenous variables used in the model are reasonable. The standard deviations for the changes in producer surplus are larger, implying a lower level of confidence in the precision of the results. In the sensitivity analysis, the loss in producer surplus for California producers ranged from $65.3 million to $114.2 million.

TABLE 2.—WELFARE GAINS AND LOSSES

[in millions of dollars]

	Welfare effect [1]	Mean [2]	Std. dev. [3]
Changes in producer surplus			
California	−$84.49	−$86.88	$16.45
Chile	−8.46	−9.23	2.98
Equivalent variation			
Time period 1 [4]			
Region A	7.92	8.31	1.33
Region B	24.36	25.02	2.19
Region C	23.80	24.57	2.58
Time period 2 [5]			
Region A	14.70	14.92	3.19
Region B	22.06	22.36	4.25
Region C	22.44	22.80	5.21
Net U.S. welfare change	30.78	31.10	2.30

[1] The difference between baseline values and values with the proposed rule.
[2] Mean values of the sensitivity analysis distributions.
[3] Standard deviations of the sensitivity analysis distributions.
[4] October 15–April 15.
[5] April 16–October 14.

Effects on Small Entities

As a part of the rulemaking process, APHIS evaluates whether regulations are likely to have a significant economic impact on a substantial number of small entities. The Small Business Administration has set size criteria for small entities according to the categories of the North American Industrial Classification System. Entities that would be directly affected by the proposed rule are U.S. producers, handlers (firms engaged in postharvest activities), and importers of avocados.

APHIS is unable to assess effects of the proposed rule for small-entity avocado handlers and importers, since we are lacking information on the number of firms that would be affected, their size distributions, and degree to which their businesses depend on the avocado industry. In general, handlers operating in California could be expected to experience a decline in business, based on the results of the analysis. Negative effects could be at least partially cancelled by additional avocado business activities in Mexico in which U.S. handlers may be involved.

U.S. avocado importers as a group would gain from the increased volume of imports from Mexico, but gains for the industry would be tempered by reduced imports from Chile. We welcome information that would allow us to evaluate impacts of the proposed rule for affected handlers and importers that are small entities.

California's large and small avocado producers are expected to incur welfare losses as described. APHIS has been unable to obtain current information on the size distribution of affected avocado producers. For the purposes of our analysis, we rely on information provided in the 1997 Census of Agriculture on the size distribution of avocado farms. (Information from the 2002 Census of Agriculture is not yet available.)

An avocado farm is considered small if it has annual receipts of not more than $750,000. According to the 1997 Census of Agriculture, over 98 percent of avocado farms are small entities. The Census of Agriculture data include producers of all varieties of avocados. We assume Hass avocado production is distributed proportionately among the various farm sizes, that is, over 98 percent of the farms growing Hass avocados are small.

Expected impacts can be described in terms of decreases in gross revenue for California producers, as shown in table 3. The model indicates that the overall decline in gross revenue would be 32.9 percent.

TABLE 3.—ANNUAL IMPACT ON GROSS REVENUE FOR CALIFORNIA AVOCADO PRODUCERS

Initial gross revenue (baseline) [1]	$339.38 million.
Gross revenue with proposed rule [1]	$227.83 million.
Decrease in gross revenue incurred by large and small Hass avocado producers	$111.55 million.
Decrease incurred by small entity avocado producers [2]	$70.28 million.
Decrease as a percentage of initial gross revenue [3]	32.9%.

[1] Gross revenue values are based on the producer prices and demand quantities for avocados supplied by California, shown rounded in table 1.

[2] Decreases in gross revenue are multiplied by 63 percent, the percentage of the total value produced by farms with less than 100 acres harvested in 1997. Hass avocado production is assumed to be proportionally distributed among farms of all sizes.

[3] The decrease in gross revenue is assumed to be proportionally spread across all producers.

In evaluating the expected impact on California's small-entity avocado producers, the large number of very small farms should be acknowledged. As indicated by the 1997 data, over one-half of the avocado farms that year harvested less than 5 acres. Average 1997 gross income for these farms was about $4,800. Clearly, farms of less than 5 acres could not be the principal source of income for their owners. Notwithstanding this large percentage of very small farms, table 3 indicates that California small-entity avocado farms could be seriously affected by the proposed rule. Generally, we assume regulations that entail compliance costs equal to a small business's profit margin—5 to 10 percent of annual sales—pose an impact that can be considered significant. Impacts simulated by this model would meet this criterion.

Alternatives

One alternative to the proposed rule would be to leave the regulations unchanged. In this case, access of Mexican avocados would continue to be restricted to the 31 States and the District of Columbia currently approved to receive avocados from Mexico between October 15 and April 15 (and Alaska year-round). Impacts for U.S. producers and consumers simulated for the proposed rule would not occur. In general, demand for avocados from all three supply regions would be expected to continue to expand due to growth in population and income. It is noted, however, that increases in avocado imports from Mexico in recent years (27.9 million pounds in 2001, 58.8 million pounds in 2002, 76.8 million pounds in 2003, as reported by World Trade Atlas) would indicate that suppliers of Mexican avocados also may be increasing their market share in the currently approved States.

Other alternatives to the proposed rule would be to increase access of Mexican avocados to the United States, but not to all States year-round. We would expect that any expansion of Mexico's access to the U.S. market other than that proposed, either regionally or by time period, would result in a lower level of additional avocado imports from Mexico and therefore smaller price and quantity impacts for California avocado producers. California producers' welfare losses would be less, as would welfare gains for consumers. Net welfare benefits of such alternatives would depend upon the relative magnitude of changes in U.S. producer and consumer surplus.

To illustrate the impacts of such an alternative, we consider effects of allowing access of Mexican avocados to all States except the avocado-producing States of California, Florida, and Hawaii. An analysis of expected impacts of this alternative, summarized here, is based on entry of Mexican avocados into California and Florida continuing to be prohibited. These two States produce over 99 percent of the Nation's avocados (all varieties). Hawaii's small production is largely for intrastate sale.

Quantity and price changes of allowing Mexican avocados to enter all States throughout the year, except California, Florida, and Hawaii, are shown in table 4. Under this alternative, avocado consumption would increase by 6.8 percent (compared to 10.4 percent under the proposed rule). Quantities supplied by California and Chile would decline by 5.6 percent and 5.8 percent, respectively (compared to 9.5 and 8.9 percent), while imports from Mexico would increase to 103 million pounds (compared to 141 million pounds), about 2½ times their initial level. California's prices would fall by 10.1 percent at the wholesale level (compared to 15.4 percent) and by 15.6 percent at the producer level (compared to 25.6 percent). Thus, all impacts are diminished in comparison to those that would result from the proposed rule.

Welfare effects for this alternative are shown in table 5. Total equivalent variation across all regions and time periods would be $76.3 million, compared to $115.3 million under the proposed rule. California avocado producers would experience welfare losses of $52.4 million (compared to $84.5 million). The net gain in welfare for the United States would be $23.9 million (compared to $30.8 million).

TABLE 4.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; SUMMARY OF CHANGES IN QUANTITIES AND PRICES[1]

	Initial prices and quantities [2]	With alternative [3]	Change	Percentage change
Quantity (millions of pounds)				
Total	537.643	574.296	+36.653	+6.8
Supplied by:				
California	376.629	355.480	−21.149	−5.6
Chile	122.564	115.511	−7.053	−5.8
Mexico	38.450	103.305	+64.855	+168.7
Wholesale price of avocados (in dollars per pound) supplied by:				
California	$1.49	$1.34	$0.15	−10.1
Chile	$1.24	$1.19	−$0.05	−4.0
Producer price for:				
California	$0.90	$0.76	−$0.14	−15.6

TABLE 4.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; SUMMARY OF CHANGES IN QUANTITIES AND PRICES[1]—Continued

	Initial prices and quantities [2]	With alternative [3]	Change	Percentage change
Chile	$0.52	$0.47	−$0.05	−9.6

[1] Prices weighted by regional and time period quantities.
[2] Baseline.
[3] Effects of the rule on quantities and prices (simulation results).

As with the sensitivity analysis of impacts of the proposed rule, a sensitivity analysis for this alternative indicated small standard deviations for the EV values and larger ones for the producer surplus. The loss in producer surplus for California producers was found to range from $40.6 million to $71.2 million.

Expected impacts for California's small-entity avocado producers under this alternative, in terms of the decreases in gross revenue, are shown in table 6. The decline would be 20.5 percent, compared to a decline of nearly 33 percent under the proposed rule. California small-entity avocado farms could still be greatly affected under this alternative, but not as severely.

In sum, effects in terms of changes in prices, quantities, and welfare measures would be smaller than the impacts expected under the proposed rule. By excluding California, Florida, and Hawaii from the proposed increased access for Mexican avocados, California's producers would experience smaller welfare losses, but consumers' gains and net welfare gains would also be lower. The proposed rule allowing Mexican avocados to be imported into all States year-round is based on the pest risk assessment's conclusion of an overall low likelihood of quarantine pest introduction.

TABLE 5.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; WELFARE GAINS AND LOSSES

	Wefare effect [1]	Mean [2]	Std. dev. [3]
Changes in producer surplus			
California	−$52.39	−$54.11	$10.59
Chile	−5.59	6.13	2.05
Equivalent variation			
Time period 1 [4]			
Region A	3.99	4.20	0.76
Region B	18.27	18.64	1.31
Region C	12.36	12.97	2.28
Time period 2 [5]			
Region A	10.89	11.11	1.87
Region B	16.98	17.28	2.49
Region C	13.79	14.20	3.47
Net U.S. welfare change	23.89	24.29	1.27

[1] The difference between baseline values and values with the alternative.
[2] Mean values of the sensitivity analysis distributions.
[3] Standard deviations of the sensitivity analysis distributions.
[4] October 15-April 15.
[5] April 16-October 14.

TABLE 6.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; ANNUAL IMPACT ON GROSS REVENUE FOR CALIFORNIA AVOCADO PRODUCERS

Initial gross revenue (baseline)	$338.97 million.
Gross revenue under the alternative	$269.60 million.
Decrease in gross revenue incurred by large and small Hass avocado producers	$69.37 million.
Decrease incurred by small entity avocado producers [1]	$43.70 million.
Decrease as a percentage of initial gross revenue [2]	20.5%.

[1] Decreases in gross revenue are multiplied by 63 percent, the percentage of the total value produced by farms with less than 100 acres harvested in 1997. Hass avocado production is assumed to be proportionally distributed among farms of all sizes.
[2] The decrease in gross revenue is assumed to be proportionally spread across all producers.

This proposed rule contains no new information collection requirements. (See **Paperwork Reduction Act** below.)

Executive Order 12988

This proposed rule would allow avocados to be imported into the United States from certified orchards in Michoacan, Mexico. If this proposed rule is adopted, State and local laws and regulations regarding avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative

proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The environmental assessment, which takes into account the findings of the risk assessment, documents our review and analysis of the potential environmental impacts associated with the importation of Hass avocados from Mexico under the conditions specified in this proposed rule. We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment is available for viewing on the Internet at *http://www.aphis.usda.gov/ppq/avocados/*. Copies of the environmental assessment are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–2bb [Removed and Reserved]

2. Section § 319.56–2bb would be removed and reserved.

3. Section 319.56–2ff would be amended as follows:

a. By revising the section heading and the introductory text of the section to read as set forth below.

b. By revising paragraph (a) to read as set forth below.

c. By revising the introductory text of paragraph (c) and paragraphs (c)(1)(i) and (c)(1)(ii) to read as set forth below.

d. By revising the introductory text of paragraph (c)(2) and paragraphs (c)(2)(i) and (c)(2)(v) to read as set forth below.

e. By revising the introductory text of paragraph (c)(3) and paragraphs (c)(3)(i), (c)(3)(iv), (c)(3)(vi), (c)(3)(vii), and (c)(3)(viii) to read as set forth below.

f. By revising paragraphs (d) and (e) to read as set forth below.

g. By removing paragraphs (f), (g), (h), (j), and (k) and redesignating paragraph (i) as paragraph (f).

h. By revising newly redesignated paragraph (f) to read as set forth below.

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Michoacan, Mexico.

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico into the United States only under a permit issued in accordance with § 319.56–3, and only under the following conditions:

(a) The avocados may be imported in commercial consignments only.

* * * * *

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual work plan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS'' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the Michoacan State delegate of the Mexican NPPO.

(1) * * * (i) The municipality must be listed as an approved municipality in the bilateral work plan provided to APHIS by the Mexican NPPO.

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) and found to be free from the large avocado seed weevil *Heilipus lauri,* the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.*

* * * * *

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with the Mexican NPPO's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually and found to be free from the avocado stem weevil *Copturus aguacatae.*

* * * * *

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

* * * * *

(3) *Packinghouse requirements.* The packinghouse must be registered with the Mexican NPPO's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by the Mexican NPPO for participation in the avocado export program.

* * * * *

(iv) Prior to the culling process, a biometric sample, at a rate determined by APHIS, of avocados per consignment must be selected, cut, and inspected by the Mexican NPPO and found free from pests.

* * * * *

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the official registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter.

(viii) The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Prior to leaving the packinghouse, avocados must be packed in insect-proof cartons, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must be intact when the avocados arrive at the port of first arrival in the United States.

* * * * *

(d) *Certification.* All consignments of avocados must be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri, Conotrachelus aguacatae, C. perseae,* or *Stenoma catenifer* are discovered in a municipality during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, the Mexican NPPO must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(3) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, the Mexican NPPO must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(f) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

* * * * *

Done in Washington, DC, this 19th day of May, 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–11709 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–3 airplanes modified with A. M. Luton's Supplemental Type Certificate (STC) number SA3777NM. This proposed AD would require you to inspect the wiring for the heating blankets on P_3 and P_Y pneumatic lines and the push-to-test function lights to ensure that they are wired to the correct schematic; replace the circuit breaker switch as applicable; and replace the flight manual supplement currently in use with Revision G, dated March 28, 2001 (incorporates Revision I of Sheet I of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this proposed AD to detect and correct wiring installed in accordance with an incorrect drawing, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in reduced current for the heating blankets and loss of pneumatic line heating, which can lead to loss of engine power or reverse propeller overspeed governing protection and ultimately loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by July 15, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–48–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from A. M. Luton, 3025 Eldridge Ave., Bellingham, WA 98225.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Special Certification Branch; telephone: 425–917–6507; facsimile: 425–917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–48–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-

stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What events have caused this proposed AD? Transport Canada, which is the airworthiness authority for Canada, recently notified FAA that an unsafe condition may exist on all Bombardier, Inc. Model DHC–3 airplanes modified with an A. M. Luton Supplemental Type Certificate (STC) number SA3777NM. Transport Canada reports a drawing error on Revisions G and H of Sheet I of the Electrical System Schematic Drawing 20075, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in severely reduced electrical energy going to the heating blankets with loss of pneumatic line heating, which can lead to loss of engine power or reverse propeller overspeed governing protection.

What are the consequences if the condition is not corrected? Electrical installation using incorrect wiring configurations could result in the electrical energy being absorbed by the light bulbs with insufficient electrical energy for the heating blankets, which would allow ice to form in these lines due to condensation even though the indication lights show the lines being heated. This could result in loss of engine power or reverse propeller overspeed governing protection and lead to loss of control of the airplane.

Is there service information that applies to this subject? A. M. Luton has issued Service Information Letter SIL–00–10–10, Electrical Systems, dated March 22, 2001.

What are the provisions of this service information? The service letter includes procedures for:

—Replacing the flight manual supplement with Revision G, dated March 28, 2001. This flight manual revision corrects the drawing error on Revisions G and H of Sheet I of the Electrical System Schematic Drawing 20075, by incorporating Revision I of Sheet I of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000;

—Inspecting the push-to-test indicator light for correct wiring; and

—Replacing the circuit breaker switch for the P_3 and P_Y pneumatic heating lines, depending on whether the engine uses one or both heating lines.

What action did Transport Canada take? Transport Canada classified this service bulletin as mandatory and issued Canadian AD Number CF–2002–38, dated August 29, 2002, to ensure the continued airworthiness of these airplanes in Canada.

Did Transport Canada inform the United States per the bilateral airworthiness agreement? These Bombardier, Inc. DHC–3 airplanes are manufactured in Canada 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.

Under this bilateral airworthiness agreement, Transport Canada has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined Transport Canada's findings, 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.

Since the unsafe condition described previously is likely to exist or develop on other Bombardier, Inc. DHC–3 airplanes of the same type design modified with A. M. Luton's STC number SA3777NM and are registered in the United States, we are proposing AD action to detect and correct incorrect wiring configuration. This can result in the electrical energy being absorbed by the light bulbs with insufficient electrical energy for the heating blankets, which would allow ice to form in these lines due to condensation even though the indication lights show the lines being heated. This could result in loss of engine power or reverse propeller overspeed governing protection and lead to loss of control of the airplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service information letter.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 32 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We have no way of determining the number of airplanes that may need the proposed rewiring or circuit breaker switch replacement. We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour est. $65 per hour = $65	$100	$165	$5,280

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–48–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. 2003–CE–48–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by July 15, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the Model DHC–3 airplanes, all serial numbers, that are:

(1) Modified with STC number SA3777NM; and

(2) Certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a drawing error on Revisions G and H of Sheet I of Drawing 20075, Electrical System Schematic. The actions specified in this AD are intended to detect and correct wiring installed according to an incorrect drawing, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in insufficient electrical energy for the heating blankets and loss of pneumatic heating, which can lead to loss of engine power or reverse propeller overspeed governing protection and ultimately loss of control of the airplane.

What Must I Do To Address This Problem?

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

Action	Compliance	Procedures
(1) Inspect the electrical wiring to the P_3 and P_Y engine pneumatic line heating blankets and the P_3 heater warning light to determine if they are wired in a parallel configuration. If they are not wired in a parallel configuration, they must be rewired.	Inspect within 4 months after the effective date of this AD or 300 hours time in service (TIS) after the effective date of this AD, whichever occurs first. Rewire prior to further flight after the inspection.	Follow the procedures in the A.M. Luton Service Information Letter SIL–00–10–10, revision dated, March 22, 2001.
(2) Replace Flight Manual Supplement currently in use with Revision G, dated March 28, 2001. This flight manual revision corrects the drawing error on Revisions G and H of Sheet I of the Electrical System Schematic Drawing 20075 by incorporating Revision I of Sheet I of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000. (i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the flight manual replacement requirement of this AD. (ii) Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Replace within 4 months after the effective date of this AD or 300 hours TIS after the effective date of this AD, whichever occurs first.	Follow the procedures in the A.M. Luton Service Information Letter SIL–00–10–10, revision dated, March 22, 2001.
(3) Inspect circuit breaker switch for heated engine pneumatic lines circuit. If an engine is installed that uses both P_3 and P_Y heated pneumatic lines, circuit breaker switch, Part Number (P/N) 20075–3 (5 amp), must be replaced with circuit breaker switch P/N 20075–59 (7.5 amp).	Inspect within 4 months after the effective date of this AD or 300 hours TIS after the effective date of this AD, whichever occurs first. Replace prior to further flight after the inspection.	Follow the procedures in the A.M. Luton Service Information Letter SIL–00–10–10, revision dated, March 22, 2001.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Special Certifications Branch, Transport Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Richard Simonson, Aerospace Engineer, Special Certifications Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW. Renton, WA 98055; telephone: 425–917–6507; facsimile: 816–917–6590.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from A.M. Luton, 3025 Eldridge Ave., Bellingham, WA 98225. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) Airworthiness Directive CF–2002–38, dated August 29, 2002, and Service Information Letter SIL–00–10–10, revision dated March 22, 2001, also pertain to the subject of this AD.

Issued in Kansas City, Missouri on May 18, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11644 Filed 5–21–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA208–4215b; FRL–7664–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Requirements for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 23, 2004.

ADDRESSES: Submit your comments, identified by PA208–4215 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. PA208–4215. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or via e-mail at *harris.betty@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 13, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04–11669 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Il221–1b; FRL–7657–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving a site-specific revision to the Illinois volatile organic compound (VOC) State Implementation Plan (SIP) for the Horween Leather Company (Horween) in Chicago, IL. By its submittal dated May 28, 2003, the Illinois Environmental Protection Agency (Illinois EPA) requested that EPA approve a site-specific rule that would change the VOC control requirements that would apply to a small amount of specialty leathers and allow them to be produced at Horween's leather production facility in Chicago. This request is approvable because it satisfies reasonably available control technology (RACT) and is a more suitable control measure for certain of its specialty leather coating operations than the existing rule which this amends. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 23, 2004.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in the Address section and the Supplementary Information section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutant Section (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. *bortzer.jay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052 *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 Office.)

Dated: April 26, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–11558 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0440b; FRL–7665–4]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The revisions concern the emission of volatile organic compounds (VOCs) from episodic releases from relief devices, the emission of VOCs from the transfer of gasoline into storage containers at bulk terminals, and the storage and transfer of gasoline at dispensing facilities. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 23, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local BAAQMD Rule 8–28, MBUAPCD Rule 418, and VCAPCD Rule 70. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 7, 2004.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 04–11554 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2003–15171]

RIN 2133–AB51

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking

AGENCY: Maritime Administration, DOT.

ACTION: Joint notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Maritime Administration (MARAD) is reopening the comment period only on MARAD's portion of the joint notice of proposed rulemaking (NPRM) published in the **Federal Register** on February 4, 2004 (69 FR 5403). MARAD's portion includes its proposed amendments to 46 CFR part 221 and its discussion in the preamble to the joint NPRM. The initial comment period closed on May 4, 2004. The comment period is reopened from May 5, 2004, until June 7, 2004.

DATES: Comments on 46 CFR part 221 must reach MARAD on or before June 7, 2004.

ADDRESSES: You may submit comments identified by MARAD Docket No. MARAD–2003–15171 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

(2) Mail: Docket Management Facility (MARAD Docket No. MARAD–2003–15171), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on the Maritime Administration's proposed rule, call John T. Marquez, Jr., Maritime Administration, telephone 202–366–5320. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

(Authority: 49 CFR 1.66.)

Dated: May 19, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11656 Filed 5–21–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 051004B]

Pacific Fishery Management Council; Notice of Intent

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for comments; preliminary notice of public scoping meetings.

SUMMARY: NMFS and the Pacific Fishery Management Council (Pacific Council) announce their intent to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) of 1969 to analyze proposals that provide dedicated access privileges for participants in the non-tribal Pacific Coast groundfish trawl fishery.

DATES: Public scoping meetings will be announced in the **Federal Register** at a later date. Written comments will be accepted at the Pacific Council office through August 2, 2004.

ADDRESSES: You may submit comments, on issues and alternatives, identified by [I.D. number] by any of the following methods:

•E-mail: *TrawlAccessEIS.nwr@noaa.gov*. Include [I.D. number] and enter ''Scoping Comments'' in the subject line of the message.

• Federal eRulemaking Portal: *http://www.regulations.gov*.

•Fax: 503–820–2299.

•Mail: Dr. Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 200, Portland, OR, 97220.

FOR FURTHER INFORMATION CONTACT: Steve Freese, (Northwest Region, NMFS) phone: 206–526–6113, fax: 206–526–6426 and email: *steve.freese@noaa.gov*; or Jim Seger, Pacific Fishery Management Council, phone: 503–820–2280, fax: 503–820–2299 and email: *jim.seger@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index/html*.

Description of the Proposal

The proposed alternatives to the status quo, which will be the subject of the EIS and considered by the Pacific Council for recommendation to NMFS, are programs that provide dedicated access privileges for participants in the non-tribal Pacific Coast groundfish trawl fishery. The main dedicated access privilege alternative the Pacific Council is considering is an individual fishing quota (IFQ) program for the Pacific Coast groundfish limited entry trawl fishery off Washington, Oregon and California. A trawl IFQ program would change management of harvest in the trawl fishery from a trip limit system with cumulative trip limits for every 2–month period to a quota system where each quota share could be harvested at any time during an open season. A trawl IFQ program would increase fishermen's flexibility in making decisions on when and how much quota to fish. Status quo (no action) will also be considered along with dedicated access privilege and other reasonable alternatives that may be proposed to address issues identified in the problem statement.

At the request of the Pacific Council, NMFS published an Advance Notice of Proposed Rulemaking regarding a Trawl Individual Quota Program and to Establish a Control Date (69 FR 1563, January 9, 2004). This control date for the trawl IQ program is intended to discourage increased fishing effort in the limited entry trawl fishery based on economic speculation while the Pacific Council develops and considers a trawl IQ program. Although the control date notice discussed the development of the trawl IQ program, NMFS and the Pacific Council also plan to consider other dedicated access alternatives.

General Background

The Council implemented a Pacific Coast Groundfish Fishery Management Plan (FMP) in 1982. Groundfish stocks are harvested in numerous commercial, recreational, and tribal fisheries in state and Federal waters off the West Coast. The non-tribal commercial seafood fleet taking groundfish is generally regulated as three sectors: Limited entry trawl, limited entry fixed gear, and directed open access. Groundfish are also harvested incidentally in non-groundfish commercial fisheries, most notably fisheries for pink shrimp, spot and ridgeback prawns, Pacific halibut, California halibut, and sea cucumbers (incidental open access fisheries).

Despite the recently completed buyback program, management of the West Coast groundfish trawl fishery is still marked by serious biological, social, and economic concerns; and discord between fishermen and managers and between different sectors of the fishery, similar to those cited in the U.S. Commission on Ocean Policy's April 2004 preliminary report. The trawl fishery is viewed as economically unsustainable given the current status of the stocks and the various measures to protect these stocks. One major source of discord and concern stems from the management of bycatch, particularly of overfished species as described in the draft programmatic bycatch DEIS. The notice of availability of the DEIS was published in the **Federal Register** on February 27, 2004 (69 FR 9314). The DEIS is available from the Pacific Council office (see **ADDRESSES**). After reviewing the draft programmatic bycatch DEIS the Pacific Council adopted a preferred alternative for addressing bycatch that included IFQ programs. The alternatives to status quo to be evaluated in the dedicated access EIS are amendments to the FMP and associated regulations to address these concerns through the use of dedicated access privileges. The concerns are described in more detail in the following problem statement:

As a result of bycatch problems, considerable harvest opportunity is being forgone in an economically stressed fishery. The trawl groundfish fishery is a multispecies fishery in which fishers exert varying and limited control of the mix of species in their catch. The optimum yields (OYs) for many overfished species have been set

at low levels that place a major constraint on the industry's ability to fully harvest the available OYs of the more abundant target species that occur with the overfished species, wasting economic opportunity. Average discard rates for the fleet are applied to projected bycatch of overfished species. These discard rates determine the degree to which managers must constrain the harvest of targeted species that co-occur with overfished species. These discard rates are developed over a long period of time and do not rapidly respond to changes in fishing behavior by individual vessels or for the fleet as a whole. Under this system, there is little direct incentive for individual vessels to do everything possible to avoid take of species for which there are conservation concerns, such as overfished species. In an economically stressed environment, uncertainties about average bycatch rates become highly controversial. As a consequence, members of fishing fleets tend to place pressure on managers to be less conservative in their estimates of bycatch. Thus, in the current system there are uncertainties about the appropriate bycatch estimation factors, few incentives for the individual to reduce bycatch rates, and an associated loss of economic opportunity related to the harvest of target species.

The current management regime is not responsive to the wide variety of fishing business strategies and operational concerns. For example, historically the Pacific Council has tried to maintain a year-round groundfish fishery. Such a pattern works well for some business strategies in the industry, but there has been substantial comment from fishers who would prefer being able to pursue a more seasonal groundfish fishing strategy. The current management system does not have the flexibility to accommodate these disparate interests. Nor does it have the sophistication, information, and ability to make timely responses necessary to react to changes in market, weather, and harvest conditions that occur during the fishing year. The ability to react to changing conditions is key to conducting an efficient fishery in a manner that is safe for the participants.

Fishery stock depletion and economic deterioration of the fishery are concerns for fishing communities. Communities have a vital interest in the short- and long-term economic viability of the industry, the income and employment opportunities it provides, and the safety of participants in the fishery.

In summary, management of the fishery is challenged with the competing goals of: controlling bycatch, taking advantage of the available allowable harvests of more abundant stocks (including conducting safe and efficient harvest activities in a manner that optimizes net benefits over the short- and long-term), increasing management efficiency, and responding to community interest.

In consideration of this statement of the problem, the following goals have also been identified for improving conditions in the groundfish trawl fishery.

- Provide for a well-managed system for protection and conservation of groundfish resources.
- Provide for a viable and efficient groundfish industry.
- Increase net benefits from the fishery.
- Provide for capacity rationalization through market forces.
- Provide for a fair and equitable distribution of fishery benefits.
- Provide for a safe fishery.

Preliminary Identification of Alternatives

NEPA requires preparation of an EIS for major Federal actions significantly affecting the quality of the human environment. The Pacific Council and NMFS are seeking information from the public on the range of alternatives and on the environmental, social, and economic issues to be considered.

Based on the above problem statement, goals and objectives, and consistent with the Pacific Council's preferred alternative in the programmatic bycatch EIS, the Pacific Council has identified IFQs for the trawl fishery as one of the main types of alternatives to status quo that it will consider. The Pacific Council has begun developing specific provisions for IFQ alternatives. Under IFQs, total harvest mortality is controlled by allocating an amount to individual fishers and holding those individuals responsible for ensuring that their harvest or harvest mortality does not exceed the amount they are allocated.

The EIS will identify and evaluate other reasonable and technically feasible alternatives that might be used to simultaneously address capacity rationalization and the other problems and goals specified here. The Pacific Council is interested in public comment on alternatives to dedicated access privilege programs that address the problems surrounding and goals for this issue. The Pacific Council is also interested in receiving comments on different types of dedicated access privilege programs that should be considered and specific provisions that should be included in the alternatives.

According to the U.S. Commission on Ocean Policy's April 2004 preliminary report (pp. 232–236), there are several different types of dedicated access privileges:

IFQs allow each eligible fisherman to catch a specified portion of the total allowable catch. When the assigned portions can be sold or transferred to other fishermen, they are called individual transferable quotas.

Community quotas grant a specified portion of the allowable catch to a community. The community then decides how to allocate the catch.

Cooperatives split the available quota among the various fishing and processing entities within a fishery via contractual agreements.

Geographically based programs give an individual or group dedicated access to the fish within a specific area of the ocean.

There are also systems that allocate the right to buy fish. Such systems are often referred to as individual processing quotas (IPQs). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) does not allow NMFS to implement IPQs. Congress has also prohibited the Department of Commerce and the Councils, via the Department's 2004 appropriations bill, from establishing or even considering IPQs (except in crab fisheries off Alaska). Therefore, they will not be considered in this EIS.

Not included in the proposed scope for this action are the two other nontribal commercial seafood harvester sectors: the limited entry fixed gear fleet and the open access fleets. The limited entry fixed gear fleet already operates under an IFQ program for sablefish, a species that dominates the groundfish economic activity for most vessels in this fleet. Including consideration of the fixed gear fleet in the development of a trawl IFQ program could increase the complexity of developing the program. The directed open access fleet has yet to be well identified. Identification of this fleet will likely be a major and controversial task in its own right, even without concurrent inclusion of the fleet under an umbrella IFQ program covering all sectors of the West Coast commercial seafood harvesting industry. However, this notice does not preclude further consideration of IFQ for other sectors of the fleet (open access and fixed gear).

At the end of the scoping process and initial Pacific Council deliberations, the Pacific Council may recommend specific alternatives and options for analysis. Depending on the alternatives selected, Congressional action may be

required to provide statutory authority to implement a specific alternative preferred by the Council. Lack of statutory authority to implement any particular alternative does not prevent consideration of that alternative or option in the EIS (40 CFR 1502.14(2)).

Preliminary Identification of Environmental Issues

A principal objective of this scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the dedicated access privilege EIS. Pacific Council and NMFS staff conducted an initial screening to identify potentially significant impacts resulting from implementing one of the proposed alternatives to status quo, as well as the continuation of status quo, no action. These impacts relate to the likelihood that there will be a substantial shift in fishing strategies, the configuration of the groundfish fleet, and fishery management and enforcement activities as a result of the implementation of a program meeting the specified goals. Impacts on the following components of the biological and physical environment may be evaluated (1) Essential fish habitat and ecosystems; (2) protected species listed under the Endangered Species Act and Marine Mammal Protection Act and their critical habitat; and (3) the fishery management unit, including target and non-target fish stocks. Socioeconomic impacts are also considered in terms of the effect changes will have on the following groups: (1) Those who participate in harvesting the fishery resources and other living marine resources (for commercial, subsistence or recreational purposes); (2) those who process and market fish and fish products; (3) those who are involved in allied support industries; (4) those who rely on living marine resources in the management area; (5) those who consume fish products; (6) those who benefit from non-consumptive use (e.g. wildlife viewing); (7) those who do not use the resource but derive benefit from it by virtue of its existence, the option to use it, or the bequest of the resource to future generations; (8) those involved in managing and monitoring fisheries; and (9) fishing communities. Analysis of the effects of the alternatives on these groups will be presented in a manner that allows the identification of any disproportionate impacts on low income and minority segments of the identified groups and impacts on small entities.

Related NEPA Analyses

Certain complementary and closely related actions are likely to be required to implement a dedicated access privilege program. As described herein, implementation of an IFQ program or an alternative dedicated access privilege program for the trawl fishery will be a two-step process. The first step is to design the basic program and its major elements (e.g. allocation of shares among participants, monitoring and reporting requirements, needed species to be allocated, etc.). With this notice, the Council and NMFS are seeking comments on this first step. The second step is to determine the amounts of each species that are to be allocated to the trawl and other sectors. Such allocations would be evaluated in a separate but related process supported by a separate but connected NEPA analysis.

Implementation of an IFQ alternative would require an allocation of available harvest between the commercial trawl fisheries and other fishing sectors (inter-sector allocation). This allocation would be needed to annually set the amount of fish that would be partitioned between participants in the trawl IFQ fishery. An inter-sector allocation may be based on an allocation formula or on a determination of the needs of a fishery for each management cycle. The only species now allocated between trawl and other sectors is sablefish. For a trawl IFQ program to succeed, the Council may need to quantify allocations for other species between the trawl sector and other fishing sectors. Allocation questions raise issues beyond developing a dedicated access privilege program. Thus, a second but related NEPA analysis will be undertaken, particularly as intersector allocations may be useful for managing the fishery even if an IFQ program is not adopted. This second NEPA analysis will be about the potential costs and benefits to all fisheries from developing specific commercial and recreational allocations and, within the commercial allocations, developing specific sub-allocations to the open access, trawl, and fixed gear fisheries.

The Council's Allocation Committee will be meeting to discuss the need for intersector allocations and criteria for making such allocation decisions. These meetings will be open to the public and announced in a separate **Federal Register** document. At approximately the time the Council approves a set of alternatives to be analyzed in the dedicated access privileges EIS, it will likely initiate formal scoping for a NEPA document to cover the intersector allocation issue. In the meantime, comments on the intersector allocation issue should be addressed to the Council office *pfmc.comments@noaa.gov* (enter ''Intersector Groundfish Allocation'' in the subject line). Potential outcomes of the allocation decision and impacts of that decision on the IFQ program would be considered in the cumulative effects section of the EIS on dedicated access privileges for the trawl fishery.

Scoping and Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed and for identifying the notable issues related to proposed alternatives (including status quo). A principal objective of the scoping and public input processes is to identify a reasonable set of alternatives that, with adequate analysis, sharply define critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. The public scoping process provides the public with the opportunity to comment on the range of alternatives and specific options within the alternatives. The scope of the alternatives to be analyzed should be broad enough for the Pacific Council and NMFS to make informed decisions on whether an alterative should be developed and, if so, how it should be designed, and to assess other changes to the FMP and regulations necessary for the implementation of the alternative, including necessary intersector allocations.

Some preliminary public scoping of IFQ alternatives has been conducted through the Council process. Such preliminary scoping is consistent with the Council on Environmental Quality guidelines (46 FR 18026, 51 FR 15618). The results of this preliminary scoping are being used to develop a scoping document that will help focus public comment. Public scoping conducted thus far includes Council meetings held September 2003 (68 FR 51007) and November 2003 (68 FR 59589), and Ad Hoc Trawl Individual Quota Committee meetings held in October 2003 (68 FR 59358) and March 2004 (69 FR 10001). To provide additional preliminary information for the public scoping document, a group of enforcement experts will meet in Long Beach, CA, May 25 and 26, 2004, and a group of analysts will meet in Seattle, WA, June 8 and 9, 2004. Times and locations for these meetings will be announced in the **Federal Register** and posted on the Council website (*www.pcouncil.org*). The public scoping document will be completed and released at least 30 days prior to the end of the scoping period.

Copies will be available from the Council office (see **ADDRESSES**) or from the Council website (*www.pcouncil.org*).

Written comments will be accepted at the Council office through July 31, 2004 (see **ADDRESSES**).

Public scoping meetings will be announced in the **Federal Register** at a later date and posted on the Council website. There will be a public scoping session held June 13, 2004, in Foster City CA, in conjunction with the June 2004 Council meeting. The exact time and location for the meeting will be provided in the **Federal Register** notice announcing the June 2004 Council meeting.

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

Dated: May 18, 2004.

Galen R. Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–11663 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 100

Monday, May 24, 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

Federal Crop Insurance Corporation

Funding Opportunity Title: Commodity Partnerships for Risk Management Education (Commodity Partnerships Program)

Announcement Type: Competitive Partnership Agreements—Initial.

CFDA Number: 10.457.

DATES: *Applications are due* 5 p.m. e.d.t., July 8, 2004.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $4.0 million for Commodity Partnerships for Risk Management Education (the Commodity Partnerships program). The purpose of this partnership agreement program is to deliver training and information in the management of production, marketing, and financial risk to U.S. agricultural producers. The program is to give priority to educating producers of crops not insurable with Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage. A maximum of 40 partnership agreements will be funded, four each in ten designated RMA Regions. The maximum award for any agreement will be $150,000. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices for each program.

Full Text of Announcement

I. Funding Opportunity Description

Legislative Authority

The Commodity Partnerships program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act).

Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information. One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of certain commodities referred to in this notice as Priority Commodities, as defined below.

Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities.* This group includes: (a) commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

A project is considered as giving priority to Priority Commodities if the majority of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

Project Goal

The goal of this program is to ensure that "* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools."

Purpose

The purpose of the Commodity Partnership program is to provide U.S. farmers and ranchers (with an emphasis on producers of Priority Commodities) with training and informational opportunities to be able to understand:

- The kinds of risks addressed by existing and emerging risk management tools;
- The features and appropriate use of existing and emerging risk management tools; and
- How to make sound risk management decisions.

Each partnership agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out a program to achieve this purpose within a designated RMA Region.

RMA envisions that most training and informational activities under these partnership agreements will be conducted during the November 2004 through March 2005 period, which will be an effective time to reach many agricultural producers with educational programs. However, activities are not restricted to this time period because certain groups of producers might benefit from a different schedule of educational activities. RMA anticipates that project leaders will have sufficient time to organize and schedule events, commit funds to reserve event facilities,

gather materials, raise awareness, and otherwise make the preparations needed to ensure good producer participation in all planned educational activities. Most of all, RMA anticipates that project leaders will prepare by fostering the cooperation and active support of organizations with close ties to local producers. Support from such organizations is essential in influencing local producers to participate in the type of activities envisioned in this educational program. Ideal partners would include public and private agricultural organizations with a stake in ensuring that agricultural producers have increased knowledge and skill in dealing with production, price, and financial risk. RMA encourages applicants to specifically address the needs of beginning farmers and ranchers as an important element of the project.

RMA also envisions that applicants will have the capacity to deliver risk management education and information to agricultural producers in the RMA Region. Capacity includes the ability to create and gather instructional and informational materials; organize and operate educational activities for producers and agribusiness leaders; broadly promote the availability of risk management educational opportunities; and clearly and thoroughly document results achieved by the project. Applicants should apply for funding under that RMA Region where the educational activities will be directed.

II. Award Information

Type of Award: Partnership Agreements, which require the substantial involvement of RMA.

Funding Availability: Approximately $4,000,000 is available in fiscal year 2004 to fund up to 40 partnership agreements. The maximum award for any agreement will be $150,000. It is anticipated that a maximum of four agreements will be funded for each designated RMA Region. In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to award recipients by mutual consent for use in broadening the size or scope of awarded projects. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2004.

Substantial involvement requirement: RMA Regional Offices and the States serviced within each Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

Billings, MT Regional Office: (MT, WY, ND, and SD)
Davis, CA Regional Office: (CA, NV, UT, AZ, and HI)
Jackson, MS Regional Office: (KY, TN, AR, LA, and MS)
Oklahoma City, OK Regional Office: (OK, TX, and NM)
Raleigh, NC Regional Office: (ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, and NC)
Spokane, WA Regional Office: (WA, ID, OR, and AK)
Springfield, IL Regional Office: (IL, IN, OH, and MI)
St. Paul, MN Regional Office: (MN, WI, and IA)
Topeka, KS Regional Office: (KS, MO, NE, and CO)
Valdosta, GA Regional Office: (AL, GA, SC, FL, and Puerto Rico)

Applicants must designate in their application narratives the RMA Region where educational activities will be conducted and the specific groups of producers within the region that the applicant intends to reach through the project. Applicants proposing to conduct educational activities in more than one RMA Region must submit a separate application for each RMA Region. This requirement is not intended to preclude producers from areas that border a designated RMA Region from participating in that region's educational activities. It is also not intended to prevent applicants from proposing the use of certain informational methods, such as print or broadcast news outlets, that may reach producers in other RMA Regions.

Maximum Award: Any application that requests Federal funding of more than $150,000 for a project will be rejected.

Project Period: Projects will be funded for a period of up to one year from the project starting date.

Description of Agreement Award

Recipient Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the award recipient will be responsible for performing the following tasks:

- Finalize and provide specific details for the Statement of Work (Form RME–2). The Statement of Work must describe the specific manner in which various subtasks for the project will be completed, the dates by which each task and subtask will be completed, the specific location for all promotional and educational activities, and the partners that will have responsibility for each task and subtask. Task milestones must be listed in a way that ensures that progress can be measured at various stages throughout the life of the project. The Statement of Work must also provide for the substantial involvement of RMA in the project. All partnership agreements resulting from this announcement will include Statements of Work based on Form RME–2. All applicants must use this format for proposing Statements of Work.
- Assemble instructional materials appropriate for risk management education and information within the designated RMA Region. This will include: (a) Gathering existing instructional materials that meet the local needs of agricultural producers; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.
- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers and agribusiness leaders in the designated RMA Region of training and informational opportunities.
- Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.
- Document all educational activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an

RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

RMA Activities

FCIC, working through RMA, will be substantially involved in each project through one of RMA's ten Regional Offices. Substantial involvement includes, but is not limited to, specific review and approval authorities in the management and direction of the project. RMA will provide substantial involvement for the projects through the activities listed below.

- Review and approve in advance the recipient's Statement of Work.
- Collaborate with the recipient in assembling risk management materials for producers in the designated RMA Region. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on instructional material development workgroups; (c) providing the project leadership with fact sheets and other risk management publications that have been prepared by RMA; (d) advising the project leader on the materials available over the internet through the AgRisk Education Library; (e) advising the project leader on technical issues related to crop insurance instructional materials; and (f) advising the project leader on the use of the standardized design and layout formats to be used on program materials.
- Collaborate with the recipient on a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.
- Collaborate with the recipient on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.
- Review and approve recipient's documentation of risk management educational activities.

Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for farmers and ranchers in an RMA Region. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

2. Cost Sharing or Matching

This program has neither a cost sharing nor a matching requirement.

3. Other—Non-Financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program).

IV. Application and Submission Information

1. Address To Request Application Package

Program application materials for the Commodity Partnerships program under this announcement may be downloaded from the RMA Web site at: *http://www.rma.usda.gov.* Applicants may also request application materials from: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave., SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: (202) 720–6356, fax: (202) 690–3605, e-mail: *Michelle.Fuller@wdc.usda.gov.*

2. Content and Form of Application Submission

A complete and valid application package must include an electronic copy (Microsoft Word format preferred) of the narrative portions (Forms RME 1 and RME 2) of the application package on diskette or compact disc and an original and two copies of the completed and signed application must be submitted in one package at the time of initial submission. Each application package must be unbound and unstapled, held together only by rubber bands or metal clips and not bound in any other way. RMA would appreciate receiving seven additional unbound copies to facilitate the panel review process (ten unbound applications in all), which must include the following:

1. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance.''
2. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the partnership or cooperative agreement. Federal funding requested (the total of direct and indirect costs) must not exceed $150,000.
3. A completed and signed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''
4. Risk Management Education Project Narrative (Form RME–1). Complete all required parts of Form RME–1:

Part I—Title Page.

Part II—A written narrative of no more than 10 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the second evaluation criterion, is to be completed in detail in RME Form-2, applicants may wish to

highlight certain unique features of the Statement of Work in Part II for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 10 pages will be reviewed.

- 12 point, unreduced font size.
- 8.5 by 11 inch paper
- One-inch margins on each page.

Part III—A Budget Narrative, describing how the categorical costs listed on SF 424–A are derived.

Part IV—Provide a ''Statement of Non-financial Benefits.'' (Refer to Section III, Eligibility Information, above).

5. ''Statement of Work,'' Form RME–2, which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

6. (Optional) An optional appendix containing project participant resumes, letters of partnership support, or other materials that the applicant believes will directly support the information provided in the narrative. Applicants should not seek letters of partnership support from RMA Regional Offices because these offices will automatically provide substantial involvement in all projects that are awarded funding.

7. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''

8. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions.''

9. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''

3. Submission Dates and Times

Applications Deadline: 5 p.m. e.d.t., July 8, 2004. Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Incomplete or late application packages will not receive further consideration.

4. Intergovernmental Review

Not applicable.

5. Funding Restrictions

Partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the partnership or cooperative agreement application;

e. Fund political activities;

f. Pay costs incurred prior to receiving a partnership or cooperative agreement;

g. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

6. Other Submission Requirements

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington, DC, area requires.

Address when using private delivery services or when hand delivering: Attention: Risk Management Education Program, USDA/RMA, Suite 508, 1250 Maryland Avenue, SW., Washington, DC 20024.

Address when using U.S. Postal Service: Attention: Risk Management Education Program, USDA/RMA, Stop 0808, 1400 Independence Ave, SW., Washington, DC 20250–0808.

Electronic submissions: Although the application package may be downloaded electronically, RMA cannot accommodate transmissions of application submissions by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA at the point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

1. Criteria

Applications submitted under the Commodity Partnerships program will be evaluated within each RMA Region according to the following criteria:

Project Benefits—Maximum 35 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the various educational activities described in the Statement of Work; (b) justify such estimates with clear specifics; (c) identify the actions producers will likely be able to take as a result of the activities described in the Statement of Work; and (d) identify the specific measures for evaluating results that will be employed in the project. Reviewers' scoring will be based on the scope and reasonableness of the applicant's estimates of producers reached through the project, clear descriptions of specific expected project benefits, and well-designed methods for measuring the project's results and effectiveness.

Statement of Work—Maximum 35 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA roles, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, and is sensitive to the needs of producers that are small, have limited resources, are

minorities, or are beginning in a farming or ranching business. Applicants are required to submit this Statement of Work on Form RME–2.

Partnering—Maximum 15 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in a designated RMA Region. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of farmers and ranchers will be reached within the RMA Region; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective RMA Region. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers will receive higher rankings.

2. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration. Applications that meet announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the RMA Region according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive partnership agreements for each RMA Region. At its discretion, the panel may recommend that the Manager not provide funding for an application receiving a score less than 50. Also at its discretion, the panel may recommend that the Manager specifically not fund an application that is highly similar to a higher-scoring application in the same RMA Region—that is, one that proposes to reach certain producers who are otherwise likely to be reached by another applicant that scored higher by the panel.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

1. Award Notices

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership agreements with those selected applicants. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2005, whichever is later.

After a partnership agreement has been signed, RMA will extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores that are lower that other applications in an RMA Region, or applications that propose to deliver education to groups of producers in an RMA Region that are largely similar to groups reached in a higher ranked application.

2. Administrative and National Policy Requirements

Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

Requirement To Provide Project Information to an RMA-Selected Contractor

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any contractor selected by RMA for program evaluation purposes.

Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be

allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

Confidential Aspects of Proposals and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

Audit Requirements

Applicants awarded partnership agreements are subject to audit.

Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other nonappropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII. Agency Contact.

Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

Requirement To Participate in Civil Rights Training

Project leaders of all partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws. Agency policies or regulations may require that project leaders attend civil rights training to become fully aware of civil rights responsibilities. In their applications, applicants should budget for possible travel costs associated with receiving this training.

3. Reporting

Applicants awarded partnership agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave., SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: 202–720–6356, fax: 202–690–3605, e-mail: *Michelle.Fuller@wdc.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov.*

VIII. Other Information

Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Dated: May 19, 2004

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–11614 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Community Outreach and Assistance Partnership Program; Initial Announcement

Catalogue of Federal Domestic Assistance (CFDA): This program is listed in the CFDA under 10–455, Community Outreach and Assistance Partnership Program.

DATES: *Closing Date:* The closing date and time for receipt of applications under this RFA is 5 p.m. eastern time on July 8, 2004. Applications received after the deadline will not be considered for funding.

SUMMARY: In accordance with section 522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance

Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of up to approximately $4 million in fiscal year (FY) 2004 for collaborative outreach and assistance programs for women, limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers, who produce agricultural commodities covered by the noninsured crop disaster assistance program (7 U.S.C. 7333); specialty crops; and under served commodities (For purposes of this announcement, these commodities are collectively referred to as ''Priority Commodities''). Awards under this program will be made on a competitive basis for projects of up to one year. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project. This announcement lists the information needed to submit an application under this program.

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate program, CFDA No. 457, ''Commodity Partnerships for Risk Management Education,'' CFDA No. 10–458, ''Targeted States Program,'' and CFDA No. 10456, ''Risk Management Research Partnerships''. These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Applicants should carefully examine and compare the unique requirements in the notices for each program.

Available Funding: The amount of funds available in FY 2004 for support of this program is up to approximately 4 million dollars. No maximum or minimum funding levels have been established for individual projects or geographic locations.

Eligible Applicants: Eligible Applicants include educational institutions, community based organizations, associations of farmers, ranchers and other nonprofit organizations with demonstrated capabilities in developing and implementing risk management and other marketing options for priority commodities. Individuals are not eligible applicants.

Address for Submission of Application: Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA/RMA. The applicable address for such submissions is: USDA–RMA, Community Outreach and Assistance Partnership Program, c/o Marie Buchanan, 1400 Independence Avenue, SW., Room 6709, Stop 0805, Washington, DC 20250–0805. Completed and signed application packages sent via the U.S. Postal Service must be sent to the above address. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Marie Buchanan, National Outreach Program Manager, Telephone (202) 690–2686, Facsimile (202) 690–1518, E-mail: *Marie.Buchanan@rma.usda.gov.* for information and to request an application package.

Application materials can also be downloaded from the RMA Web site at *http://www:rma.usda.gov.* Application materials are also available at Grants.gov. To access materials go to *www.grants.gov*. Click on ''Find Grant Opportunities.'' Click on ''Search Grant Synopses.'' And enter ''10–455'' to search by CFDA Number. From the search results, select ''Community Outreach and Assistance Partnership Program'' to access this RFA and forms for this program.

SUPPLEMENTARY INFORMATION: This announcement consists of seven parts:

Part I—Funding Opportunity
A. Legislative Authority and Background
B. Project Goal
C. Purpose and Priorities
D. Definition of Priority Commodities
E. Program Description
F. Other Activities
Part II—Award Information
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Part I —Funding Opportunity Description

A. Legislative Authority and Background

This program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance program, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's four strategic goals is to ensure that its customers and potential customers are well informed of the risk management solutions available. This goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, a priority is to be given to producers of Priority Commodities (as specified in subsection D of this section).

B. Project Goal

The goal of this program is to ensure that ''* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.''

C. Purpose and Priorities

The purpose of the Community Outreach and Assistance Partnership Program is to ensure that women, limited resource, socially disadvantaged, and other traditionally underserved producers of priority commodities are provided information and training necessary to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. Each

partnership agreement awarded through this program will provide the applicant with funds, guidance, and the substantial involvement of RMA to carry out a risk management education and information program for producers in a specific geographical area.

D. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

• *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

• *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

• *Underserved commodities.* This group includes: (a) Commodities, including livestock, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage produced by small, limited resource, socially disadvantaged, or beginning farmers and ranchers.

A project is considered as giving priority to Priority Commodities if the majority of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

E. Program Description

In conducting activities to achieve the purpose and goal of this program, the award recipient will be responsible for the activities listed below: FCIC working through RMA will be substantially involved in the activities listed under RMA activities below.

Award recipients will be required to:

1. Finalize a detailed Statement of Work as part of the Delivery Plan. The Statement of Work must describe the manner in which various tasks for the project will be completed, the dates by which each task will be completed and the individuals or organizations that will have responsibility for each task. Task milestones must be listed to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project. All partnership agreements resulting from this announcement will include a Statement of Work in the table format shown in the Appendix to this announcement. All applicants are strongly encouraged to refer to this table when preparing a Statement of Work and to use this format as part of the application narrative.

2. Assemble risk management instructional materials appropriate for targeted producers to be used in delivering education and information. This will include: (a) Gathering existing instructional materials that meet the local needs of agricultural producers of agricultural commodities; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.

3. Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers of the training and informational opportunities being offered.

4. Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise farmers on risk management.

5. Document all outreach/educational activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities. This requirement also includes providing RMA with demographic data on program participants.

RMA will be responsible for:

1. Review and approve in advance the recipient's project delivery plan and Statement of Work.

2. Collaborate with the recipient in assembling risk management materials for producers. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other risk management publications that have been prepared by RMA; (d) advising the recipient on the materials available over the internet through the AgRisk Education Library; (e) advising the recipient on technical issues related to crop insurance instructional materials; and (f) advising the recipient on the use of the standardized design and layout formats to be used on program materials.

3. Collaborate with the recipient on a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the recipient on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.

4. Collaborate with the recipient on the delivery of education to agricultural producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all producer and agribusiness educational delivery plans; (b) advising the recipient on technical issues related to the delivery of crop insurance education and information; and (c) assisting the recipient in informing crop insurance professionals about educational plans and scheduled meetings.

5. Reviewing and approving recipient's documentation of risk management educational activities.

6. Collect demographic data on program participants from recipients.

F. Other Activities

In addition to the specific, required activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners. The applicant must also identify specific ways in which RMA could have substantial involvement in the proposed outreach and educational activity.

Part II—Award Information

A. Available Funding

The amount of funds available in FY 2004 for support of this program is up

to approximately 4 million dollars. There is no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. Applicants awarded a partnership agreement for an amount that is less than the amount requested may be required to modify their application to conform to the reduced amount before execution of the partnership agreement. No maximum or minimum funding levels have been established for individual projects or geographic locations. It is expected that the awards will be made approximately 75 days after the application deadline. All awards will be made and agreements completed no later than September 30, 2004.

B. Types of Applications

Applicants must specify whether their application is a new, renewal, or resubmitted application and provide the required information in accordance with the following:

New Applications—This is a project application that has not been previously submitted to the RMA Outreach Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in this RFA.

Renewal Applications—This is a project proposal that requests additional funding for a project beyond the period that was approved in an original or amended award. Applications for renewed funding must contain the same information as required for new applications, and additionally must contain a current Progress Report. Renewal applications received by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

Resubmitted Applications—This is a proposal that was previously submitted to the RMA Outreach office, but was not funded. Resubmitted proposals received by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

Part III—Eligibility Information

A. Eligible Applicants

Eligible applicants include educational institutions, community based organizations, associations of farmers, ranchers and other nonprofit organizations with demonstrated capabilities in developing and implementing risk management and other marketing options for priority commodities. Individuals are not eligible applicants. Applicants are encouraged to form partnerships with other entities that complement, enhance and/or increase the effectiveness and efficiency of the proposed project. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

B. Non-financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program.

C. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

D. Cost Sharing or Matching

A 10 percent match of the total award amount is required from non-federal funds in the form of cash or in kind contributions.

E. Funding Restrictions

Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

2. To purchase, rent, or install fixed equipment;

3. Repair or maintain privately owned vehicles;

4. Pay for the preparation of the partnership application;

5. Fund political activities;

6. Pay costs incurred prior to receiving this partnership agreement;

7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

Part IV—Application and Submission Information

A. Address To Request Application Package

Program application materials under this announcement may be downloaded from the RMA Web site at: *www.rma.usda.gov.* Applicants may also request application materials from: Marie Buchanan, Telephone (202) 690–2686, Facsimile (202) 690–2496, E-mail: *Marie.Buchanan@usda.gov.*

B. Content and Form of Application

A complete and valid application package must include an original, two paper copies, and one electronic copy (Microsoft Word format preferred) of the application package on diskette or compact disc. Submission of Standard Forms is not required to be submitted electronically on a diskette or compact disc. Hard copies are required. A complete application package must include the following documents in the order indicated

1. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance.''

2. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Indirect costs allowed for projects submitted under this announcement will be limited to 10 percent of the total direct cost of the partnership or cooperative agreement.

Indicate the total amount (both cash and non-cash) of non-Federal cost-sharing or matching support that will be available to the proposed project. A 10 percent match of the total award amount is required from non-federal funds in the form of cash or in kind contributions. Reasonable travel expenses to attend a two-day Project Directors Meeting and mandatory Civil Rights training sponsored by RMA may be included in the requested budget.

3. Budget Narrative. The applicant should provide a budget narrative to accompany SF 424A, which provides details and explanations regarding individual cost items that are itemized on the form. All budget categories must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the SF–424A. There must be a detailed breakdown of all costs, including indirect costs, and costs for each subcontract. A narrative for each line item explaining both Federal and cost-sharing/matching funds and detailing how each line item was derived. Also provide a brief narrative description of any costs that may require explanation (*i.e.,* why a

specific costs may be higher than market costs). Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act, the applicable Federal cost principles, and are not prohibited under any other Federal statute. Salaries of project personnel should be requested in proportion to the effort that they would devote to the project. Identify the source, the amount, and the nature (cash or third-party in-kind contribution) of the required 10 percent matching funds.

4. A completed and signed OMB Standard Form 424–B—''Assurances, Non-constructive Programs.''

5. ''Statement of Non-financial Benefits.'' (Refer to Part III (B) ''Non-financial Benefits'')

6. A Narrative Title Page. This single page can provide: (a) The name of the project; (b) the name of the program; (c) the specific State or area for which the project will be directed; (d) the organization submitting the application; (e) a listing of project partners; (f) a brief project summary; and (g) information needed to contact the project's leader, including an e-mail address.

7. A written narrative (limited to twenty-five single-sided pages) that describes the outreach project in detail, including the program delivery plan and State of Work. The narrative should provide reviewers with sufficient information to effectively evaluate the merits of the application under the criteria contained in Part V. In preparing narratives, applicants are strongly encouraged to carefully review and understand the specific features and authorities governing the specific program for which funds are being requested, as described in this announcement. The narrative should include the circumstances giving rise to the proposed activity; a clear, concise statement of the objectives; the steps necessary to implement the program to attain the objectives; an evaluation plan for the activities; and a program delivery plan and Statement of Work that describes how the activities will be managed by the applicant.

The Statement of Work should identify each objective and the key tasks to achieve the objective, the entity responsible for the task, the completion date, the task location, and RMA's role. All partnerships resulting from this announcement are required to have Statements of Work prepared in the table format shown in the appendix to this announcement. Therefore, applicants are strongly encouraged to refer to this table when preparing a delivery plan and to use this table format in that portion of the application narrative that addresses the delivery plan.

8. An appendix containing exhibits that the applicant believes will directly support the information provided in the narrative (Optional).

9. Progress Report—Required for Renewal Applications Only. See Part II (B) ''Types of Applications''.

10. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''

11. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary Covered Transactions).''

12. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''

13. Current and Pending Support—All applications must contain a Current and Pending Support Form listing other current public or private support. Concurrent submission of identical or similar applications to the possible sponsors will not prejudice application review or evaluation by the RMA. However, an application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program.

C. Submission of Applications

1. An original and two paper copies of the completed and signed application, and one electronic copy (Microsoft Word format preferred) on diskette or compact disc must be submitted in one package at the time of initial submission.

2. All applications must be received by the deadline. Applications that do not meet all the requirements in this announcement are considered as late applications. Late or incomplete applications will not be considered and will be returned to the applicant.

3. Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. The address must appear on the envelope or package containing the application with the note ''Attention: Community Outreach and Assistance Partnership Program.'' Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated above for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington, DC area now requires.

RMA cannot accommodate transmissions of applications by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt. The deadline for receipt of an application is 5 p.m. Eastern Time on (insert 45 days from the date of publication in **Federal Register**). The application deadline is firm as to date and hour and applies to submission of the original application and two copies.

D. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide an e-mail addresses in the application. If an e-mail address is not indicated on an application, letter will acknowledge receipt. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact Marie Buchanan at (202) 690–2686 or electronically at *Marie.Buchanan@rma.usda.gov.*

Part V—Review Process

A. General

Each application will be evaluated using a two-part process. First, RMA personnel will screen each application to ensure that it meets the administrative requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further evaluation.

Second, a review panel will consider the merits of all applications that meet the requirements in the announcement. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. Reviewers will be drawn from USDA, other federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding. The panel will examine and score applications based on the ''Evaluation Criteria and Weights'' contained in paragraph B of this part.

Applications will be evaluated and scored in each of the four criteria listed below. The panel will be looking for the specific elements listed with each criterion when evaluating the applications and scoring them. For each application, panel members will assign a point value up to the maximum for each criterion. After all reviewers have evaluated and scored each of the applications, the scores for the entire panel will be averaged to determine an application's final score.

After assigning points upon those criteria, applications will be listed in initial rank order and presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement. Applications will then be funded in final rank order until all available funds have been expended. Applicants must score 50 points or more during the first round to be considered for funding. Unused remaining funds from the first round of competition will be allocated to the second round of competition. Unless the applicant withdraws their proposal, eligible, but unfunded, proposals from the first competition will be considered in the second competition.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the programs described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under this announcement is sufficiently similar to a project that has been funded or has been recommended to be funded under another FCIC or RMA education or outreach program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

Applications will be evaluated according to the following criteria:

1. Project Management—Maximum 20 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist women, limited resource, socially disadvantaged and other traditionally underserved producers. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to, personnel who have experience in directing agricultural programs or providing educations programs that benefit producers will receive higher rankings.

2. Collaborative Partnering—Maximum 20 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of other agencies, grower organizations, agribusiness professionals, and agricultural leaders to enhance the quality and effectiveness of the program. Applicants will receive higher scores to the extent that they can document, with letters of commitment, and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad and diverse group of farmers and ranchers will be reached; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

3. Delivery Plan—Maximum 30 Points

The applicant must demonstrate that its program delivery plan is clear and specific. For each of the applicant's responsibilities contained in the description of the program, the applicant must demonstrate that it can identify specific tasks and provide reasonable time lines that further the purpose of this program. Applicants will obtain a higher score to the extent that the tasks of the project are specific, measurable, and reasonable, have specific time frames for completion, and relate directly to the required activities and program objectives described in this announcement. For guidance on a delivery plan format, applicants are encouraged to refer to the table in the appendix of this notice.

4. Project Benefits—Maximum 30 Points

The applicant must demonstrate that the project benefits to women, limited resource, socially disadvantaged and other traditionally underserved producers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the project; (b) justify the estimates with clear specifics related to the delivery plan; (c) identify the actions producers will likely be able to take as a result of the project; and (d) identify specific measures for evaluating the success of the project. Reviewers' scoring will be based on the scope and reasonableness of the applicants' estimates of producers reached through the project, clear descriptions of specific expected project benefits for producers, and well-constructed plans for measuring the project's effectiveness.

5. Diversity—Maximum 20 Points

Applicant must identify the geographic areas and target audience to be served. After applications have been evaluated and awarded points under the first four criteria, management may assess diversity points to promote the broadest geographic diversity.

Part VI—Award Administration

A. Notification of Cooperative or Partnership Agreement Awards

Following approval by the RMA awarding official, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership or cooperative agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project.

The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year. RMA will then extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved

agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, scored low or were duplicative. Applicants that are not funded will be notified within 90 days after the receipt of applications.

B. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

C. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

D. Reporting Requirements

Applicants awarded partnership agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

E. Audit Requirements

Applicants awarded partnership or cooperative agreements are subject to audit.

F. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other non appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available from Marie Buchanan at the above stated address and telephone number.

G. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

H. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

I. Requirement To Participate in Civil Rights training

All recipients of federally assisted programs are required to comply with Federal civil rights laws and regulations. USDA/RMA policies and procedures requires recipients of federally assistant programs to attend mandatory civil rights training, sponsored by RMA, to become fully aware of civil rights requirements and responsibilities. Applicants should include in their budgets reasonable travel costs associated with attending a two day Project Directors meeting which will include civil rights training.

Part VII—Additional Information

A. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

B. Requirement To Provide Project Information to an RMA-Selected Contractor

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its education programs by providing documentation of educational activities and related information to any contractor selected by RMA for program evaluation purposes. This requirement also includes providing demographic data on program participants.

C. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under either of the two educational programs described in this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Such entities will also not be allowed the receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

D. Required Registration for Electronic Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central

location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications via grants.gov (a DUNS number is needed for CCR registration). For information about how to register in the CCR visit ''Get Started'' in the Web site, *http://www.grants.gov.* Allow a minimum of 5 days to complete the CCR registration.

E. A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. A **Federal Register** notice of final policy issuance (68 FR 38402) requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number go to *http://www.grants.gov.* Please note that the registration may take up to 14 business days to complete.

Dated: May 19, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–11616 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Crop Insurance Education in Targeted States (Targeted States Program)

ANNOUNCEMENT TYPE: Competitive Cooperative Agreements—Initial.

CFDA NUMBER: 10.458.

DATES: Applications are due 5 p.m. e.d.t., July 8, 2004.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $4.5 million to fund cooperative agreements under the Crop Insurance Education in Targeted States program (the Targeted States program). The purpose of this cooperative agreement program is to deliver crop insurance education and information to U.S. agricultural producers in certain States that have been designated as historically underserved with respect to crop insurance. The states, collectively referred to as Targeted States, are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. A maximum of 15 cooperative agreements will be funded, one in each of the 15 Targeted States. The maximum award for varies by State. Recipients of awards must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), and CFDA No. 10.457 (Commodity Partnerships for Risk Management Education). Prospective applicants should carefully examine and compare the notices for each program.

Full Text of Announcement

I. Funding Opportunity Description

Legislative Authority

The Targeted States program is authorized under section 524(a)(2) of the Federal Crop Insurance Act (Act).

Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 524(a)(2) of the Act. This section authorizes funding for the establishment of crop insurance education and information programs in States that have historically been underserved by Federal crop insurance program. In accordance with the Act, the fifteen States designated as ''underserved'' are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming (collectively referred to as ''Targeted States'').

Project Goal

The goal of the Targeted States program is to ensure that farmers and ranchers in the Targeted States are sufficiently informed so as to take full advantage of existing and emerging crop insurance products.

Purpose

The purpose of the Targeted States program is to provide farmers and ranchers in Targeted States with education and information to be able to understand:

- The kinds of risk addressed by crop insurance;
- The features of existing and emerging crop insurance products;
- The use of crop insurance in the management of risk; and
- How the use of crop insurance can affect other risk management decisions, such as the use of marketing and financial tools.

Each cooperative agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out a program to achieve this purpose in a Targeted State.

For some farms in Targeted States, existing crop insurance products are either not available or require enhancements to provide effective protection. The Act envisions new and enhanced insurance products that will meet the needs of these farmers and ranchers. Until these new products are available, producers will benefit from an educational program that provides an understanding of crop insurance and the basic skills required for making a sound crop insurance decision.

RMA envisions that most training and informational activities under these cooperative agreements will be conducted during the November 2004 through March 2005 period, which will be an effective time to reach many agricultural producers with educational programs. However, activities are not restricted to this time period because certain groups of producers might benefit from a different schedule of educational activities. RMA anticipates that project leaders will have sufficient time to organize and schedule events, commit funds to reserve event facilities, gather materials, raise awareness, and otherwise make the preparations needed to ensure good producer participation in all planned educational activities. Most of all, RMA anticipates that project leaders will prepare by fostering the cooperation and active support of organizations with close ties to local producers. Support from such organizations is essential in influencing

local producers to participate in the type of activities envisioned in this educational program. Ideal partners would include public and private agricultural organizations in the Targeted State with a stake in ensuring that agricultural producers have increased knowledge and skill in the use of crop insurance. RMA encourages applicants to specifically address the needs of beginning farmers and ranchers as an important element of the project.

RMA also envisions that applicants will have the capacity to deliver crop insurance education and information to agricultural producers in the Targeted State. Capacity includes the ability to create and gather instructional and informational materials; organize and operate educational activities for producers and agribusiness leaders; broadly promote the availability of risk management educational opportunities; and clearly and thoroughly document results achieved by the project. Applicants should apply for funding for that Targeted State where applicant intends on delivering educational activities.

II. Award Information

Type of Award: Cooperative Agreements, which require the substantial involvement of RMA.

Funding Availability: Approximately $4,500,000 is available in fiscal year 2004 to fund up to 15 cooperative agreements, a maximum of one agreement for each of the Targeted States. The maximum funding amount anticipated for each Targeted State's agreement is as follows:

Maine	$225,000
New Hampshire	173,000
Vermont	226,000
Connecticut	225,000
Rhode Island	157,000
Massachusetts	209,000
New York	617,000
New Jersey	272,000
Pennsylvania	754,000
Maryland	370,000
Delaware	261,000
West Virginia	209,000
Nevada	208,000
Utah	301,000
Wyoming	293,000
Total	4,500,000

Funding amounts were determined by first allocating an equal amount of $150,000 to each Targeted State. Remaining funds were allocated on a pro rata basis according to each Targeted State's share of 2000 agricultural cash receipts relative to the total for all Targeted States. Both allocations were totaled for each Targeted State and rounded to the nearest $1,000.

In the event that additional funds become available under this program or in the event that no application for a given Targeted State is recommended for funding by the evaluation panel, these additional funds may, at the discretion of the Manager of FCIC, be allocated pro-rata to State award recipients by agreement between RMA and the award recipient for use in broadening the size or scope of awarded projects within the Targeted State. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2004.

Substantial involvement requirement: Targeted States serviced by RMA Regional Offices are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for Targeted States projects conducted within respective Regions.

Billings, MT Regional Office: (WY)
Davis, CA Regional Office: (NV and UT)
Raleigh, NC Regional Office: (ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, and WV)

Applicants must designate in their application narrative the Targeted State where crop insurance educational activities for the project will be directed. Applicants may apply to deliver education to producers in more than one Targeted State, but a separate application must be submitted for each Targeted State.

Maximum Award: Any application that requests Federal funding of more than the amount listed above for a project in a given Targeted State will be rejected.

Project Period: Projects will be funded for a period of up to one year from the project starting date.

Description of Agreement Award

Recipient Tasks

In conducting activities to achieve the purpose and goal of this program in a designated Targeted State, the award recipient will be responsible for performing the following tasks:

- Finalize and provide specific details for the Statement of Work (Form RME–2). The Statement of Work must describe the specific manner in which various subtasks for the project will be completed, the dates by which each task will be completed, the specific locations for all promotional and educational activities, and the partners that will have responsibility for each task and subtask. Task milestones must be listed in a way that ensures that progress can be measured at various stages throughout the life of the project. The Statement of Work must also provide for the substantial involvement of RMA in the project. All cooperative agreements resulting from this announcement will include Statements of Work based on Form RME–2. All applicants must use this format for proposing Statements of Work.
- Assemble instructional materials appropriate for crop insurance education and information within the designated Targeted State. This will include: (a) Gathering existing instructional materials that meet the local needs of agricultural producers; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.
- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance; (b) inform producers of the availability of crop insurance; and (c) inform producers and agribusiness leaders in the designated Targeted State of training and informational opportunities.
- Deliver crop insurance training and informational opportunities to agricultural producers and agribusiness professionals in the designated Targeted State. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on crop insurance tools and decisions.
- Document all educational activities conducted under the cooperative agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

RMA Activities

FCIC, working through RMA, will be substantially involved in each project through one of RMA's Regional Offices.

Substantial involvement includes, but is not limited to, specific review and approval authorities in the management and direction of the project. RMA will provide substantial involvement for the projects through the activities listed below.

- Review and approve in advance the recipient's Statement of Work.
- Collaborate with the recipient in assembling crop insurance instructional materials for producers in the designated Targeted State. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on instructional material development workgroups; (c) providing the project leadership with fact sheets and other risk management publications that have been prepared by RMA; (d) advising the project leader on the materials available over the internet through the AgRisk Education Library; (e) advising the project leader on technical issues related to crop insurance instructional materials; and (f) advising the project leader on the use of the standardized design and layout formats to be used on program materials.
- Collaborate with the recipient on a promotional program for raising awareness for crop insurance and for informing producers of training and informational opportunities in the Targeted State. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.
- Collaborate with the recipient on the delivery of education to producers and agribusiness leaders in the Targeted State. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.
- Review and approve recipient's documentation of crop insurance educational activities.

Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of crop insurance education for farmers and ranchers within a Targeted State. Individuals are eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

2. Cost Sharing or Matching

This program has neither a cost sharing nor a matching requirement.

IV. Application and Submission Information

1. Address To Request Application Package

Program application materials for the Targeted States program under this announcement may be downloaded from the RMA Web site at: *http://www.rma.usda.gov.* Applicants may also request application materials from: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave., SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: (202) 720–6356, fax: (202) 690–3605, e-mail: *Michelle.Fuller@wdc.usda.gov.*

2. Content and Form of Application Submission

A complete and valid application package must include an electronic copy (Microsoft Word format preferred) of the narrative portions (Form RME 1 and RME 2) of the application package on diskette or compact disc and an original and two copies of the completed and signed application must be submitted in one package at the time of initial submission. Each application package must be unbound and unstapled, held together only by rubber bands or metal clips and not bound in any other way. RMA would appreciate receiving seven additional unbound copies to facilitate the panel review process (ten applications in all), which must include the following:

1. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance.''
2. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the partnership or cooperative agreement. Federal funding requested (the total of direct and indirect costs) must not exceed the maximum level for the respective Targeted State, as specified in Section II, Award Information.
3. A completed and signed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''
4. Risk Management Education Project Narrative (Form RME–1). Complete all required parts of Form RME–1:

Part I—Title Page.

Part II—A written narrative of no more than 10 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the second evaluation criterion, is to be completed in detail in RME Form-2, applicants may wish to highlight certain unique features of the Statement of Work in Part II for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 10 pages will be reviewed.

- 12 point, unreduced font size.
- 8.5 by 11 inch paper.
- One-inch margins on each page.

Part III—A Budget Narrative, describing how the categorical costs listed on SF 424–A are derived.

Part IV—(Not required for Targeted States Program).

5. ''Statement of Work,'' (Form RME–2), which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.
6. (Optional) An optional appendix containing project participant resumes, letters of partnership support, or other materials that the applicant believes will directly support the information provided in the narrative. Applicants should not seek letters of partnership support from RMA Regional Offices

because these offices will automatically provide substantial involvement in all projects that are awarded funding.

7. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''

8. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions.''

9. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''

3. Submission Dates and Times

Applications Deadline: 5 p.m. e.d.t., July 8, 2004. Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Incomplete or late application packages will not receive further consideration.

4. Intergovernmental Review

Not applicable.

5. Funding Restrictions

Cooperative agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the partnership or cooperative agreement application;

e. Fund political activities;

f. Pay costs incurred prior to receiving a partnership or cooperative agreement;

g. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

6. Other Submission Requirements

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington, DC, area requires.

Address when using private delivery services or when hand delivering: Attention: Risk Management Education Program, USDA/RMA, Suite 508, 1250 Maryland Avenue, SW., Washington, DC 20024.

Address when using U.S. Postal Service: Attention: Risk Management Education Program, USDA/RMA, Stop 0808, 1400 Independence Ave, SW., Washington, DC 20250–0808.

Electronic submissions: Although the application package may be downloaded electronically, RMA cannot accommodate transmissions of application submissions by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA at the point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

1. Criteria

Applications submitted under the Targeted States program will be evaluated within each Targeted State according to the following criteria:

Project Benefits—Maximum 35 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the various educational activities described in the Statement of Work; (b) justify such estimates with clear specifics; (c) identify the actions producers will likely be able to take as a result of the activities described in the Statement of Work; and (d) identify the specific measures for evaluating results that will be employed in the project. Reviewers' scoring will be based on the scope and reasonableness of the applicant's estimates of producers reached through the project, clear descriptions of specific expected project benefits, and well-designed methods for measuring the project's results and effectiveness.

Statement of Work—Maximum 35 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA roles, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, and is sensitive to the needs of producers that are small, have limited resources, are minorities, or are beginning in a farming or ranching business. Applicants are required to submit this Statement of Work on Form RME–2.

Partnering—Maximum 15 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in a designated Targeted State. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of farmers and ranchers will be reached within the Targeted State; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective Targeted State. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers will receive higher rankings.

2. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration. Applications that meet announcement requirements will be sorted into the Targeted State in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within a Targeted State, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the Targeted State according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report to the Manager of FCIC on the results of the evaluation. The panel's report will include the recommended applicants to receive cooperative agreements for each Targeted State. At its discretion, the panel may recommend that the Manager not provide funding for an application receiving a score less than 50.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

1. Award Notices

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative agreements with those applicants. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2005, whichever is later.

After a cooperative agreement has been signed, RMA will extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores below 50, or applications with evaluation scores that are lower that those of other applications in a Targeted State.

2. Administrative and National Policy Requirements

Requirement To Use Program Logo

Applicants awarded cooperative agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

Requirement To Provide Project Information to an RMA-Selected Contractor

Applicants awarded cooperative agreements will be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any contractor selected by RMA for program evaluation purposes.

Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

Confidential Aspects of Proposals and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the

fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a cooperative agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

Audit Requirements

Applicants awarded cooperative agreements are subject to audit.

Prohibitions and Requirements With Regard To Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other nonappropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII. Agency Contact.

Applicable OMB Circulars

All cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

Requirement To Participate in Civil Rights Training

Project leaders of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws. Agency policies or regulations may require that project leaders attend civil rights training to become fully aware of civil rights responsibilities. In their applications, applicants should budget for possible travel costs associated with receiving this training.

3. Reporting

Applicants awarded cooperative agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave., SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: 202–720–6356, fax: 202–690–3605, e-mail: *Michelle.Fuller@wdc.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov.*

VIII. Other Information

Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.456 (Risk Management Research Partnerships), and CFDA No. 10.457 (Commodity Partnerships for Risk Management Education). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Dated: May 19, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–11613 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Applications (RFA): Research and Development Risk Management Research Partnerships

Announcement Type: Announcement of availability of funds and request for application for risk management research partnerships.

Catalog of Federal Domestic Assistance Number (CFDA): 10.456.

DATES: The closing date and time for receipt of an application is 5 p.m. c.d.t. on July 8, 2004. Applications received after the deadline will not be evaluated by the technical review panel and will not be considered for funding. All awards will be made and agreements completed no later than September 30, 2004.

Overview: The purpose of the Risk Management Research Partnerships is to fund the development of non-insurance risk management tools that will be utilized by agricultural producers to assist them in mitigating the risks inherent in agricultural production. The proposals must address at least one of the seven objectives listed in part I.D. Approximately $4 million is available to fund an undetermined number of partnerships. Applications are accepted from public and private entities; individuals are not eligible to apply. No cost sharing by the applicant is required. There are no limitations on the number of applications each applicant may submit.

I. Funding Opportunity Description

A. Background

RMA is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. It does this by offering Federal crop insurance and other risk management products and tools through a network of private-sector entities and by overseeing the creation of new products, seeking enhancements in existing products, and by expanding the use of a variety of risk management tools. Risk management tools include a variety of risk management options and strategies developed to assist producers in mitigating the risks inherent in agricultural production. Risk

management tools may include: Financial management tools to mitigate price and production risks; tools to enhance measurement and prediction of risks in order to facilitate risk diversification; tools to improve production management, harvesting, record keeping or marketing. For the purposes of this announcement, risk management tools do not include insurance products, plans of insurance, policies, modifications thereof or any related material.

B. Purpose

The purpose of this program is to fund partnership agreements that assist producers, minimize their production risks, and/or develop risk management tools. The agreements are for the development of risk management tools for use directly by agricultural producers. To aid in meeting these goals each partnership agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out these risk management initiatives. Applications requesting funding for the development of insurance products, plans of insurance, policies, modifications thereof or related materials are excluded from consideration under this announcement.

C. Authorization

In accordance with section 522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) announces the availability of funding for risk management research activities. Priority will be given to those activities addressing the need for risk management tools for producers of the following agricultural commodities (For purposes of this announcement, these commodities are collectively referred to as ''Priority Commodities''):

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities.* This group includes: (a) Commodities, including livestock that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage.

D. Objectives

The project objectives listed below highlight the research priorities of RMA. The objectives are listed in priority order, with the most important objective designated as 1, the second most important designated as 2, *etc.* The order of priority will be considered in making awards. The suggested emphasis discussed within each objective is not meant to be exhaustive. Applicants may propose other topics within any project objective but justification for those topics must be provided.

RMA encourages proposals that address multiple risks and will result in the development of tools that provide an integrated or holistic approach to risk mitigation. Preference will be given to such proposals.

Proposals may address multiple objectives, but each proposal must specify a single primary objective for funding purposes.

In the order of priority, the project objectives are:

1. To develop risk management tools to assist producers in reducing the impact of multiple-year losses, such as the multiple-year losses due to sustained or recurring drought. (Maximum number of partnerships to be funded—4)
2. To develop risk management tools to assist forage and rangeland producers in improving techniques for one or more of the following: Managing production, *e.g.*, optimization of grazing patterns; establishing and maintaining forage production records; drought mitigation; harvesting or marketing production. (Maximum number of partnerships to be funded—4)
3. To develop risk management tools to assist livestock producers in improving techniques for one or more of the following: Planning and managing the production of livestock, including disease management and control; improving techniques for breeding of livestock; managing price, revenue, or production and market risks. (Maximum number of partnerships to be funded—3)
4. To develop risk management tools encouraging self-protection for production agricultural enterprises vulnerable to losses due to terrorism. (Maximum number of projects to be funded—3)
5. To develop risk management tools to assist limited resource and/or traditionally underserved farmers and ranchers and/or producers with limited English language proficiency. The tools developed under this objective should address risks that may be specific to the targeted producers and/or will assist the targeted producers in gaining meaningful access to existing risk management tools and information. (Definitions: A *limited resource farmer* is a producer or operator of a farm with an annual gross income of $20,000 or less derived from all sources of revenue or a producer on a farm of less than 25 acres (aggregated for all crops) where a majority of the producer's gross income from farming operations does not exceed $20,000; and/or direct or indirect gross farm sales not more than $100,000 in each of the previous two years adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service (NASS) and a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years. *Traditionally underserved farmers and ranchers* include: Women, African Americans, Asians and Pacific Islanders, American Indians and Alaskan Natives and Hispanics.) (Maximum number of partnerships to be funded—2)
6. To clarify labor requirements and assist producers in complying with requirements to better meet the physically intense and time-compressed planting, tending, and harvesting requirements associated with the production of specialty crops and underserved agricultural commodities. (Maximum number of partnerships to be funded—2)
7. To develop risk management tools to further increase the economic and production stability of wild salmon fishermen. (Maximum number of projects to be funded—1)

II. Award Information

A. Award Description

Approximately $4 million is available for partnership agreements that will fund risk management research activities. Awards under this program will be made on a competitive basis. Projects can also be in two parts with the first part including the research and feasibility studies and the second part including the development, implementation, delivery and maintenance of the risk management tool. If the development of the tool is determined not to be feasible, the partnership may be terminated by RMA after completion of the first part with funding reduced accordingly. There is

no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. Applicants awarded a partnership agreement for an amount that is less than the amount requested will be required to modify their application to conform to the reduced amount before execution of the partnership agreement. No maximum or minimum funding levels have been established for individual projects. All awards will be made and agreements completed no later than September 30, 2004.

Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to substantial involvement of RMA in the project. RMA encourages collaborative efforts and geographic diversity of proposed projects. In conducting activities to achieve the purpose of this proposed research, the recipient will be responsible for the activities listed under Section II. A. 1 of this part. RMA will be responsible for the activities listed under Section II. A. 2 of this part.

1. Recipient Activities

The applicant will be required to perform the following activities:

a. Finalize, in cooperation with RMA, the partnership agreement.

b. Define non-financial benefits and the substantial involvement of the RMA.

c. Coordinate, manage, document and implement the timely completion of the approved research and development activities.

d. Abide by the plans and provisions contained in the partnership agreement.

e. Report on program performance in accordance with the partnership agreement.

f. The recipient may be required to make a presentation to the FCIC Board of Directors.

g. Adhere to RMA guidelines for systems development and information technology development.

h. In cooperation with RMA, determine the feasibility and if necessary collaborate in the development of a plan to administer, maintain, and update the risk management tool in the future.

2. RMA Activities

a. Collaborate on the research plan;

b. Advise the recipient on the materials available over the internet and through the RMA Web site (*http://www.rma.usda.gov*) and be involved in the gathering of any additional information that may be required;

c. Collaborate with the recipient in all phases of the research and development of the risk management tool, and any educational efforts to enable producers to utilize the risk management tool; and

d. Collaborate with the recipient in the development of all materials associated with the research and development program as it relates to publication or presentation of the results and the risk management tools to the public, any producer groups, RMA, and the FCIC Board of Directors.

e. Collaborate with the recipient in the development of a proposal to administer, maintain and update the risk management tool in the future.

B. Other Activities

In addition to the specific activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific timelines for performing the tasks, and specific responsibilities of the partners. For any additional activity suggested, the applicant should identify specific ways in which RMA could or should have substantial involvement in that activity.

III. Eligibility Information

A. Eligible Applicants

Proposals are invited from qualified public and private entities. Eligible applicants include colleges and universities, Federal, State, and local agencies, Native American tribal organizations, non-profit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

B. Cost Sharing or Matching

Cost sharing, matching, in-kind contributions, or cost participation is not required.

C. Other

Applicants must be able to demonstrate they will receive non-financial benefits as a result of the partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete educational programs). Refer to part V. for evaluation criteria and weights.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may download an application package from the Risk Management Agency Web site at: *www.rma.usda.gov.* Applicants may also request an application package from: USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, phone: (816) 926–6343, fax: (816) 926–7343, e-mail: *RMARED.Application@rma.usda.gov.* Completed and signed application packages sent via the U.S. Postal Service must be sent to the same address. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

B. Content and Form of Application Submission

A complete and valid application package must include an original, twelve complete paper copies, and one copy (Microsoft Word format preferred) of the application package on diskette or compact disc, and:

1. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance''.

2. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs''. Reviewers will need sufficient information to effectively evaluate the budget. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of the total direct cost of the agreement. A sample budget narrative, including suggestions for format and content, is available on the RMA Web site (*www.rma.usda.gov*) or upon request.

3. A completed and signed OMB Standard Form 424–B, ''Assurances, Non-construction Programs''.

4. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''

5. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary Covered Transactions.'')

6. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''

7. A statement of the non-financial benefits of any partnership agreement to the recipient. (Refer to Part II.B ''Non-financial Benefits'').

8. A completed Form R&D–1, ''Title Page and Proposal Summary.'' Each proposal must specify the single primary objective for evaluation and funding purposes. The same or similar proposals cannot be submitted multiple times with different primary objectives specified. If the same or similar proposals are submitted, the first received will be the only one evaluated.

9. A proposal narrative submitted with the application package should be limited to 10 single-sided pages. Reviewers will need sufficient information to effectively evaluate the application under the criteria contained in part V. A sample narrative, including suggestions for format and content, is available on the RMA Web site (*www.rma.usda.gov*) or upon request.

10. An appendix containing any attachments that may support information in the narrative (Optional).

11. A completed Form R&D–2, ''Statement of Work.''

Applicants are responsible for ensuring the application materials are received by the closing date. Incomplete application packages will not receive further consideration.

C. Submission Dates and Times

The closing date and time for receipt of an application is 5 p.m. c.d.t. on July 8, 2004. Applications received after the deadline will not be evaluated by the technical review panel and will not be considered for funding.

D. Funding Restrictions

No maximum or minimum funding levels have been established for individual projects or for categories of objectives. The funding level by category of objective will be determined by FCIC. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of total direct cost of the agreement.

Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

2. To purchase, rent, or install fixed equipment;

3. Repair or maintain privately owned vehicles;

4. Pay for the preparation of the partnership application;

5. Fund political activities;

6. Pay costs incurred prior to receiving this partnership agreement;

7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

E. Other Submission Requirements

1. An original and twelve (12) complete paper copies of the completed and signed application, and one copy (Microsoft Word format preferred) on diskette or compact disc must be submitted in one package at the time of initial submission.

2. Applicants are encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA. The applicable address for such submissions is: RMA/RED Partnership Agreement Program, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676.

3. All applications must be submitted and received by the deadline. Applications that do not meet all of the requirements in this announcement are considered incomplete applications. Late or incomplete applications will not be considered in this competition and will be returned to the applicant.

4. Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. The address must appear on the envelope or package containing the application with the note ''Attention: RMA/RED Partnership Application.''

Mailed applications will be considered meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated above for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices now require.

5. RMA cannot accommodate transmissions of applications by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

V. Application Review Information

A. Criteria

1. Research Objectives—Maximum 40 Points

The application must receive a minimum score of 32 points under this criterion in order to be considered for further evaluation and funding. Applications receiving less than 32 points will be eliminated and will not be evaluated under criteria 2 through 5.

The proposal clearly defines the development, management and implementation of a risk management tool designed to meet the needs of the producers outlined for at least one of the objectives listed in part I.D. Proposals that best meet the objective and are innovative, clear, concise, useful, easy to understand, and address multiple risks that result in the development of tools that provide an integrated or holistic approach to risk mitigation will be given the highest score.

2. Indication of RMA Involvement and Non-financial Benefits—Maximum 10 Points

The proposal clearly indicates areas of substantial involvement by RMA and clearly indicates benefits derived from the partnership that extends beyond the financial benefits or funding of the research proposal. Those proposals that clearly outline the involvement of RMA in all aspects of the project and demonstrate non-financial benefit will receive the highest score. Examples of non-financial benefits would be the benefits derived by an educational institution by providing research opportunities to students or benefits derived through the furtherance of an organization's mission.

3. Research Approach, Methodology, Development and Implementation—Maximum 40 Points

The proposal clearly demonstrates a sound research approach and defines the methodology to be used as well as describes the development and implementation of the risk management tool. Proposals that demonstrate a clear, concise and generally accepted research methodology and innovative approach will receive the highest number of points.

4. Management—Maximum 10 Points

The proposal clearly demonstrates the applicant's ability and resources to coordinate and manage all aspects of the proposed research project. The applicant whose approach is the most cost effective and optimizes the use and effective application of the funding will receive the highest score.

B. Review and Selection Process

Each application will be evaluated using a four-part process. First, each application will be screened by RMA to ensure that each proposal specifies a single primary objective for evaluation and funding purposes and the proposal meets the objectives stated in part I.D. The same or similar proposals cannot be submitted multiple times with different primary objectives specified. If the same or similar proposals are submitted, the first received will be the only one evaluated. Applications that do not meet the objectives stated in part I.D and all other requirements in this announcement or are incomplete will not receive further consideration.

Second, all eligible applications will be evaluated using the criterion in part V.A.1. Applications must score at least 32 points under this criteria in order to be to be evaluated further. Third, all applications scoring the required 32 points will be evaluated further under part V.A.2 through 4. For the second and third steps, a review panel will consider the merits of all applications that are complete and meet the objectives in part I.D. and all other requirements in this announcement. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. The panel will be comprised of representatives from USDA, other federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding. The panel will examine and score applications based on the evaluation criteria and weights contained in part V.A. In order to be considered for funding, an application must meet or exceed a minimum number of points established by computing the average score of all evaluated applications in all objectives. For the last step, those applications meeting the minimum number of points will be listed in initial rank order by objective. The highest-ranking proposal for each objective will be funded in the order of priority (the highest ranking proposal meeting objective 1 will be funded first and the highest ranking proposal meeting objective 2 will be funded second, *etc.*). It is possible that funds could be exhausted before funding projects for every objective. If there are sufficient funds, the process will be repeated until the maximum number of partnerships for each objective has been funded. The maximum number of partnerships to be funded under each objective is listed with the objectives in part I.D. The projects selected for funding will be presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement.

If the Manager of FCIC determines that any application is sufficiently similar to a project that has been funded or has been recommended to be funded under this announcement or any other research and development program, then the Manager may elect to not fund that application in whole or in part.

VI. Award Administration Information

A. Award Notices

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, each applicant is encouraged to provide an e-mail address in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact the Research and Development Division at (816) 926–6343.

B. Administrative and National Policy Requirements

1. Access to Panel Review Information

Upon written request, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

2. Notification of Partnership Agreement Awards and Notification of Non-Selection

Following approval of the applications selected for funding, notice of project approval and authority to draw down funds will be made to the selected applicants in writing. Within the limit of funds available for such purpose, the awarding official of RMA shall enter into partnership agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The partnership agreement provides the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project.

The effective date of the partnership agreement shall be the date the agreement is executed by both parties. All funds provided to the applicant by FCIC must be expended solely for the purpose for which funds are obligated in accordance with the approved application and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied, as a result of any award made pursuant to this announcement.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, proposals that did not meet the objectives, scored low or were duplicative.

3. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within the application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

4. Audit Requirements

Applicants awarded the partnership agreements are subject to audit.

5. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal

organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors (1) to certify that they have neither used nor will use any appropriated funds for payments of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or subcontractors will pay with profit or other nonappropriated funds on or after December 22, 1989; (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available from David Fulk at the above stated address and telephone number.

6. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

C. Reporting

Applicants awarded a partnership agreement will be required to submit quarterly progress and financial reports (SF–269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

VII. Agency Contact

If applicants have any questions they may contact: USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, or phone: (816) 926–6343, or fax: (816) 926–7343, or e-mail: *RMARED_Application@rma.usda.gov.*

VIII. Other Information

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

Dated: May 19, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–11615 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on June 2, at 6 p.m. in Libby, Montana and July 14, 2004 in Eureka for business meetings. The meetings are open to the public.

DATES: June 2, and July 14, 2004.

ADDRESSES: The June 2, meeting will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT. The July 14 meeting location in Eureka will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include informational presentations, status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: May 14, 2004.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 04–11600 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the Massachusetts Advisory Committee will begin at 1 p.m. and end at 7 p.m., Wednesday, June 9, 2004 in Room T102, MBTA Building, North Shore Community College, 300 Broad Street, Lynn, MA. The purpose of the community forum is to discuss the significance of Lynn's Voluntary Desegregation Plan and the implementation of English immersion education since the statewide passage of Question 2.

Persons desiring additional information should contact Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least 10 (ten) working days before the scheduled date of the community forum.

The community forum will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 14, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–11467 Filed 5–21–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Vermont Advisory Committee will convene at 2 p.m. and adjourn at 2:30 p.m. on Wednesday, May 26, 2004. The purpose of the conference call is to discuss the civil rights of individuals with disabilities in the state of Vermont.

This conference call is available to the public through the following call-in number: 1–800–659–1203; access code number 23956472. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office, 202–376–7533 (TTY 202–375–8116), by 4 p.m. on Tuesday, May 25, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 18, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–11606 Filed 5–21–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil (A–353–838), Ecuador (A–331–802), India (A–533–840), Thailand (A–549–822), the People's Republic of China (A–570–893), and the Socialist Republic of Vietnam (A–503–822).

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is postponing the preliminary determinations in the antidumping duty investigations of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China (PRC), and the Socialist Republic of Vietnam (Vietnam) until no later than July 2, 2004 (PRC and Vietnam) and July 28, 2004 (Brazil, Ecuador, India, and Thailand). These postponements are made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: May 24, 2004.

FOR FURTHER INFORMATION CONTACT: David Goldberger (Brazil and Ecuador) (202) 482–4163, Irina Itkin (India and Thailand) (202) 482–0656, or Alex Villanueva (PRC and Vietnam) (202) 482–3208; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Due Date for Preliminary Determinations

On January 20, 2004, the Department initiated antidumping duty investigations of imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC, and Vietnam. *See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China, and the Socialist Republic of Vietnam,* 68 FR 3876 (January 27, 2004). The notice of initiation stated that we would issue our preliminary determinations no later than 140 days after the date of initiation. *See Id.* Currently, the preliminary determinations in these investigations are due on June 8, 2004.

Pursuant to section 733(c)(1)(B) of the Act, the Department may extend the period for reaching a preliminary determination until no later than the 190th day after the date on which the administrating authority initiates an investigation if:

(B) the administrating authority concludes that the parties concerned are cooperating and determines that:

(i) The case is extraordinarily complicated by reason of

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination.

We find that all concerned parties are cooperating in all cases, and we find that these cases are extraordinarily complicated because of the number of firms involved, and the complexity of the transactions and adjustments to be considered. Furthermore, for the market-economy investigations of Brazil, Ecuador, India, and Thailand, unlike the non-market economy cases of the PRC and Vietnam, the Department must make determinations regarding the appropriate comparison markets for normal value calculations, and the initiation of sales-below-cost investigations, which require additional time.

Pursuant to section 733(c)(1)(B) of the Act, we have determined that these cases are extraordinarily complicated and that additional time is necessary to make our preliminary determinations. Therefore, we are partially extending the preliminary determination date for the PRC and Vietnam until no later than July 2, 2004, and we are fully extending the preliminary determination date for Brazil, Ecuador, India, and Thailand until no later than July 28, 2004.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: May 18, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–11674 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We preliminarily determine that hand trucks and certain parts thereof from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination. The estimated margins of sales at less than fair value are shown in the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy, Stephen Cho, or Audrey Twyman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1540, (202) 482–3798, or (202) 482–3534, respectively.

Preliminary Determination

The Department of Commerce (''the Department'') has conducted this antidumping investigation in accordance with section 733 of the Tariff Act of 1930, as amended (''the Act''). We preliminarily determine that hand trucks and certain parts thereof (''hand trucks'') from the People's Republic of China (the ''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petitioners in this investigation are Gleason Industrial Products, Inc.

and Precision Products Inc. (collectively, the ''petitioners''). Both of these companies are members of the Gleason Group.

Case History

We initiated this investigation on December 3, 2003. *See Initiation of Antidumping Duty Investigation: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 68 FR 68591 (December 9, 2003) (''*Initiation Notice*''). Since the initiation of this investigation the following events have occurred.

On December 22, 2003, we issued a letter to interested parties in this investigation providing an opportunity to comment on the characteristics that we should use in identifying the different models that the respondents sold in the United States. The petitioners and Qingdao Taifa Group Co. Ltd., a PRC producer of hand trucks, submitted comments between January 6 and January 28, 2004. No other party submitted comments.

On January 5, 2004, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from the PRC. *See Hand Trucks and Certain Parts Thereof from China*, 69 FR 1603 (January 9, 2004).

On January 16, 2004, we sent a partial Section A questionnaire to all of the producers/exporters named in the petition and to the exporters who comprise the top 70 percent of exporters in terms of quantity imported (pieces) of the subject merchandise according to data from U.S. Customs and Border Protection (''CBP''). We requested information on the quantity and value of subject hand trucks sold by these producers/exporters during April 1, 2003 through September 30, 2003, the period of investigation (''POI''), in order to identify potential respondents in the investigation.

We received responses from six PRC producers/exporters of hand trucks. We did not receive responses from a number of firms in the PRC although the record indicates that these companies received our January 16, 2004, questionnaire. Also, a number of our January 16, 2004, questionnaires were returned to us as ''undeliverable.'' On February 6, 2004, we selected the following four mandatory respondents: Qingdao Huatian Hand Truck Co., Ltd. (''Huatian''), Qingdao Taifa Group Co., Ltd. (''Taifa''), Qingdao Xinghua Group Co., Ltd. (''Xinghua''), and True Potential Company (''True Potential''). *See* February 6, 2004 respondent selection memorandum from John Brinkmann to Susan Kuhbach.

On February 6, 2004, the Department issued its full antidumping questionnaire to the mandatory respondents. All of the companies responded to the questionnaire. In addition, we received Section A responses from the following companies: Qingdao Future Tool Inc. (''Future Tool''), Qingdao Zhenhua Industrial Group Co., Ltd. (''Zhenhua''), and Shandong Machinery Import & Export Group Corp. (''Shandong''). We issued supplemental questionnaires to the mandatory respondents between March and April of 2004, to which the respondents filed timely responses.

On March 19, 2004, we received a submission from the petitioners requesting that the Department examine their allegations of significant government control over the hand trucks industry in Qingdao and issue a supplemental questionnaire to the Chinese central, provincial, and municipal governments to determine the role played by the respective governments in the development and expansion of the hand truck industry in Qingdao. We discuss this submission in more detail in the ''Separate Rates'' section below.

On March 22, 2004, we requested publicly available information for valuing the factors of production and comments on surrogate-country selection. On April 8, 2004, we received surrogate-country selection comments and information for factor valuations from the petitioners and the mandatory respondents Huatian, Taifa, and True Potential.

On April 6, 2004, pursuant to section 733(c)(1)(B) of the Act, we postponed the preliminary determination in this investigation by 26 days to May 17, 2004, after determining that this investigation was ''extraordinarily complicated'' and additional time was necessary. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Notice of Postponement of Preliminary Antidumping Duty Determination*, 69 FR 19153 (April 12, 2004).

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On May 11, 2004, we received requests to postpone the final determination from all the mandatory respondents. In their requests, the respondents consented to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination and no compelling reasons for denial exist, we have postponed the final determination until not later than 135 days after the publication of the preliminary determination.

Period of Investigation

The POI corresponds to the two most recent fiscal quarters prior to the filing of the petition, *i.e.*, April 1, 2003 through September 30, 2003.

Scope Comments

In accordance with the preamble to our regulations (see *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We did not receive any scope comments from interested parties within the comment period. However, on May 4, 2004, Angelus Manufacturing, a hand trucks manufacturer based in California, requested that certain specific parts be excluded from the scope of this investigation. We did not receive this request in time for the preliminary determination. Therefore, we will address this scope request in the final determination.

Scope of Investigation

For the purpose of this investigation, the product covered consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame

having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and for the purposes of U.S. Customs and Border Protection, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of producers or exporters, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.

On January 16, 2004, we sent a partial Section A questionnaire to all of the producers/exporters named in the petition and to the exporters who comprise the top 70 percent of exporters in terms of quantity imported (pieces) of the subject merchandise according to data from CBP. We also sent the partial questionnaire to the Chinese government and asked for its assistance in delivering the questionnaire to all producers and exporters of the subject merchandise. We received responses from six companies that reported exports of subject merchandise during the POI.

There is no data on the record that indicates conclusively the number of producers or exporters from the PRC which exported the subject merchandise to the United States during the POI. Having received six responses from producers or exporters to our partial Section A questionnaire, we determined that we had the resources to examine a maximum of four of the companies. We found it appropriate to select the largest producers/exporters of the subject merchandise from the six companies in order to cover the greatest possible export volume of the merchandise. Thus, we selected Huatian, Taifa, True Potential, and Xinghua. *See* February 6, 2004 respondent selection memorandum from John Brinkmann to Susan Kuhbach.

Non-Market-Economy Country Status

The Department has treated the PRC as a non-market-economy (''NME'') country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104 (December 20, 1999), and *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998)). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

No party in this investigation has requested a revocation of NME status for the PRC. Therefore, we have preliminarily determined to continue to treat the PRC as an NME. When we investigate imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in a market economy that is at a comparable level of economic development and that is a significant producer of comparable merchandise. The sources used to value individual factors are discussed in the ''Factor Valuations'' section below.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. In this case, the mandatory respondents Huatian, Taifa, True Potential, and Xinghua have requested separate company-specific rates. In addition, Future Tool, Shandong, and Zhenhua have requested separate rates.[1]

To establish whether a company operating in an NME country is sufficiently independent to be eligible for a separate rate, the company must establish an absence of governmental control on both a *de jure* and a *de facto* basis. In determining whether a company meets this requirement, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See *Silicon Carbide.*

De Jure Control

In determining whether there is an absence of *de jure* government control, the Department considers the following: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any

[1] As explained in the ''Margins for Exporters Not Selected'' section below, Zhenhua is not entitled to a separate-rate analysis because it did not export the subject merchandise to the United States during the POI.

legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies. *Id.* In this case, the mandatory respondents Huatian, Taifa, True Potential, and Xinghua provided evidence on the record that indicates that their export activities are not controlled by the government. In addition, evidence on the record indicates that the export activities of the following companies are also not controlled by the government: Future Tool and Shandong (collectively the ''Section A respondents'').

The mandatory respondents and the Section A respondents have placed a number of documents on the record to demonstrate absence of *de jure* government control, including the ''Foreign Trade Law of the People's Republic of China'' (''Foreign Trade Law''), the ''Company Law of the PRC'' (''Company Law''), the ''PRC's Enterprise Legal Person Registration Administrative Regulations'' (''Administrative Regulations''), the ''Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures'' (''Joint Ventures Law''), the ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises'' (''State-Owned Industrial Enterprises Regulations''), and the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (''Industrial Enterprise Law''). These laws indicate that the government lacks control over the mandatory respondents or any of the Section A respondents and that these enterprises retain control over themselves.

The Department has analyzed these laws in prior cases and found that they establish an absence of *de jure* control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 29571 (June 5, 1995), and *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From the People's Republic of China,* 63 FR 72255 (December 31, 1998). We have no new information in this proceeding which would cause us to reconsider this determination.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of Future Tool, Huatian, Shandong, Taifa, True Potential, and Xinghua.

De Facto Control

The Department typically considers the following four factors in evaluating whether a company is subject to *de facto* governmental control of its export functions: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *Id.*

With respect to the absence of *de facto* government control over the export activities of the mandatory respondents and the Section A respondents, evidence on the record indicates that the government has no involvement in their determination of export prices, profit distribution, marketing strategy, and contract negotiations; nor is the government involved in the daily operations or the selection of management for these companies. In addition, we found that these companies' pricing and export strategy decisions are not subject to any governmental review or approval and that there are no governmental policy directives that affect these decisions.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the export activities of Future Tool, Huatian, Shandong, Taifa, True Potential, and Xinghua, we preliminarily determine that these companies have met the requirements for receiving a separate rate for purposes of this investigation.

Petitioners' March 19, 2004, Submission

On March 19, 2004, we received a submission from the petitioners alleging that there has been a significant government role in and control over the establishment of the hand truck producers in Qingdao and the structure of the hand trucks industry, resulting in the Qingdao hand truck industry attaining its giant size and production capabilities. The petitioners request that the Department issue a supplemental questionnaire to the Chinese central, provincial, and municipal governments to determine the role played by the respective governments in the development and expansion of the hand truck industry in Qingdao. The petitioners contend that the Department should deny separate rates for the hand truck producers in Qingdao if the evidence on record shows that there is significant government involvement in the hand trucks industry.

The Department's current separate rates test, as detailed above in this section, does not examine the types of government control alleged by the petitioners.

The actions allegedly undertaken by the Chinese central, provincial and municipal governments are indicia that the PRC is a non-market economy, a point which is not contested in this case. In applying the separate rates test, however, we are seeking to identify governmental interference in the individual companies' export making decisions. We note that the Department recently issued a notice soliciting comments on the Department's current separate rates policy and whether the current policy appropriately measures whether exporters act, *de facto*, independently of the government in their export activities. *See Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries: Request for Comments,* 69 FR 24119 (May 3, 2004) (''*Separate Rates Notice*''). The petitioners may wish to pursue their concerns by offering comments in that process.

Margins for Exporters Not Selected

Future Tool, Shandong, and Zhenhua have requested separate rates. These parties responded to Section A of the Department's antidumping questionnaire but were not selected as mandatory respondents in this investigation. They provided information to the Department, in a timely manner, for a separate-rate analysis. Although we are unable to calculate a company-specific rate for these companies due to administrative constraints (*see* Memorandum from John Brinkmann to Susan Kuhbach regarding selection of respondents, dated February 6, 2004), they have cooperated in providing the information that we requested.

However, based on record evidence, we determine that Zhenhua did not have any sales to the United States during the POI because all of its reported sales during the POI were made to a Chinese trading company. With respect to those sales, the Chinese trading company sets the terms of sale and negotiates prices with the U.S. buyer. *See* Zhenhua's April 7, 2004 questionnaire response at 3. Therefore, Zhenhua is not entitled to a separate rate because it did not export the subject merchandise to the United States during the POI. Thus, we have calculated a

separate dumping margin only for Shandong and Future Tool based on the rates we calculated for the mandatory respondents. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 41347, 41350 (August 1, 1997).

The PRC-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received responses to the full questionnaire from Huatian, Taifa, True Potential, and Xinghua. We have received responses to Section A of our questionnaire from Future Tool, Shandong, and Zhenhua. We assume that the firms which received our January 16, 2004, questionnaire but did not respond to it (*see* the ''Case History'' section above) also exported the subject merchandise to the United States during the POI. Consequently, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters in the PRC based on our presumption that those respondents which failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from companies which we have preliminarily determined to have met the requirements for receiving a separate rate for purposes of this investigation.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available.

As explained above, the exporters comprising the single PRC-wide entity failed to respond to the Department's requests for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used facts available for the PRC-wide rate because we did not receive the data needed to calculate a margin for that entity. Also, because the exporters comprising the PRC-wide entity failed to respond to our requests for information, we have found that the PRC-wide entity failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for that entity. As adverse facts available, we have recalculated the margins that the petitioners alleged in their November 13, 2003, petition using surrogate values in the petition, updated to the period of investigation and where appropriate, surrogate values from the preliminary determination and surrogate values derived from other information submitted by the petitioners. For the adverse facts available rate, we have selected the highest of the petition margins, since the margins derived from the information in the petition exceed those we calculated for the mandatory respondents. As discussed in the memorandum to file regarding the corroboration of facts available, dated May 17, 2004, we found that the margin of 346.94 percent has probative value. Accordingly, we find that the highest margin, based on petition information and adjusted as described in the May 17, 2004, corroboration of facts available memorandum, of 346.94 percent is corroborated within the meaning of section 776(c) of the Act. For details on this calculation, see the Memorandum from John Brinkmann to the File regarding calculation of the adverse-facts-available margins dated May 17, 2004.

Regarding the mandatory respondents, the Department has observed significant deficiencies or inconsistencies between information presented in the sales responses and factors of production (''FOP'') responses by each producing respondent: Taifa, Huatian and Xinghua (True Potential does not produce the subject merchandise it exports to the United States). Specifically, in reporting their United States sales to the Department, among other information, each respondent was requested to report the net weight of the hand truck model or hand truck part sold to the United States. In their FOP responses, among other information, the producing respondents were requested to identify the raw material inputs used to produce each model/part sold in the United States and the amount of the input (by weight) needed to produce the model/part.

We compared the total weight of the material inputs for the models/parts sold to the United States that accounted for the largest total sales values to the weights reported in the sales responses. From this comparison, we found that, for many models/parts, the sum of the material input weights was significantly lower than the weight reported for that model/part. We then examined other sources of information submitted by the producing respondents in their questionnaire responses, such as respondent product catalogs and samples of sales and shipping documents. These sources also showed total product weights that were higher than the total weights of the material inputs used to produce the products.

On May 7, 2004, we contacted counsel for Huatian, Taifa and Xinghua seeking explanations for these discrepancies. See the May 7, 2004, memoranda from John Brinkmann to File regarding questions related to reported FOP input weights. On May 10, counsel for Huatian and Taifa stated that the total weights reported in each company's sales response were supplied by the companies' sales staff while the input weight data was prepared by the production workshops. They stated that the weights reported in the sales responses were not necessarily the current actual weights of the hand truck or hand truck part but rather were based upon information available to the sales staff. Counsel claimed that the reported weights likely either came from information that was out of date or from estimates made by the sales staff and as such did not necessarily reflect the current construction of the hand trucks or hand truck parts. See the May 10, 2004, memoranda from John Brinkmann to File regarding the Department's follow-up on questions related to reported FOP input weights (''FOP Weight Memo'').

Counsel for Xinghua stated that the discrepancy was likely due to the fact that several of the significant material input fields were reported in the company's response as U.S. dollar amounts. Xinghua's counsel stated that these U.S. dollar amounts reflected the prices Xinghua paid for its market economy purchases of these inputs. As

a result, Xinghua's FOP data did not reflect the physical amounts of these significant inputs. Counsel for Xinghua further advised the Department of an additional error in reporting FOP usage rates. See FOP Weight Memo for Xinghua.

On the basis of our specific findings for each company, which are detailed below, we preliminarily determine that the use of facts otherwise available is appropriate for Huatian, Taifa and Xinghua because these companies have not provided certain information in the form or manner requested. Specifically, we have concluded that we are unable to calculate a normal value on the basis of the information provided by Taifa and Huatian because the FOP information is incomplete. For Xinghua, we have used the reported data to compute normal value despite certain deficiencies described below. Pursuant to section 351.301 (b)(1) of the Department's regulations, for a final determination in an antidumping investigation, parties may submit additional factual information seven days before the date on which the verification of any person is scheduled to commence. Pursuant to section 351.307(b)(1)(i), the Department will conduct verifications of the factual information submitted by parties and any factual information that is submitted in a timely manner will be subject to verification. If the respondents do not amend their responses to provide the information in the form or manner requested in a timely manner, the Department may resort to adverse facts available for the final determination.

Xinghua

For Xinghua, we are applying partial facts available in our calculation of normal value because, as explained below, we are able to utilize the reported FOP data for each model/part sold to the U.S. using information on the record. We have found that adverse facts available is not warranted in the selection of facts available for Xinghua because Xinghua has provided timely responses to all of our requests for information.

Xinghua reported certain significant raw material inputs as U.S. dollar amounts rather than as physical amounts (*i.e.*, kilogram of inputs used to produce on unit of output), while other material inputs were reported in physical units. For those raw material inputs not reported as physical amounts, Xinghua claims that it has instead reported the U.S. dollar value per hand truck of their market economy inputs. Although the Department's questionnaire requested that the respondents report the amount of raw material utilized to produce one unit of the subject merchandise, for purposes of this preliminary determination, we are able to utilize these market economy values into our calculation of normal value. We note, however, that these U.S. dollar values may include purchases from other non-market economy countries or values from certain countries with export subsidies, which the Department typically would exclude from its calculation of market economy prices. This information will be verified by the Department and adjusted by the Department as necessary for the final determination. Similarly, for the other error in reported FOP usage rates, as facts available, we are utilizing the factor inputs as reported because, based on our understanding of the reporting error, it is not clear what effect (if any) this has on the results.

Taifa

For Taifa, we are applying partial facts available in our calculation of normal value because, as explained below, we are able to adjust the reported FOP data for each model/part sold to the U.S. using information on the record. We have found that adverse facts available is not warranted in the selection of facts available for Taifa because Taifa has provided timely responses to all of our requests for information and the FOP information provided by Taifa is more complete than the FOP information provided by Huatian, where we are applying adverse facts available.

For Taifa, we observed for selected U.S. models/parts that the total material input weights reported in Taifa's May 6, 2004, FOP response were significantly below the total weight of the model/part as reported in Taifa's May 6, 2004, sales response. Where a comparable model was listed in the product catalog submitted by Taifa on February 23, 2004, the weight in the catalog corresponded to the total weight reported by Taifa in its sales response. We also examined sample shipping documents related to one U.S. sale that were submitted in Exhibit A–7 of Taifa's February 23, 2004, response and found that the weight for the model of hand truck covered by this shipment corresponded to the weight reported by Taifa in its sales response. This weight was listed on a detailed purchase order that was generated by Taifa's customer, a packing list generated by Taifa, and a forwarder's cargo receipt.

Based upon these comparisons, we preliminarily find that Taifa's material input information is understated, and we preliminarily determine that the use of facts otherwise available is appropriate to remedy the apparent under-reporting of material usage rates. Because the information in Taifa's actual sales/shipping documents (*i.e.*, the customer's purchase order, packing list, and forwarder's cargo receipt) indicated that the weights reported in Taifa's sales responses more accurately reflected the weight of the model being sold than did the material inputs reported by Taifa, as facts available, we have proportionately increased the reported material input weights to correspond to the total weight reported in the sales response. Specifically, for each model/part sold in the United States by Taifa, we have increased the reported material inputs for each material input by the percentage difference between the sum of the reported material input weights for that model/part (less packing and recoverable scrap) and the high end of the weight range reported for that model. We have used the high end of the total weight range to account for scrap loss that occurs in the production of one unit of subject merchandise.

Huatian

We have determined that the use of a partial adverse facts available is warranted in our calculation of normal value for Huatian in order to remedy the apparent under-reporting of material usage rates.

We have observed for selected models/parts that the total material input weights reported in Huatian's April 26, 2004, FOP response were significantly below the total weight of the model/part as reported in Huatian's April 26, 2004, sales response. Where a comparable model was listed in the product catalog submitted by Huatian on February 27, 2004, the weight in the catalog corresponded to the total reported by Huatian in its sales response. We also examined sample shipping documents related to one U.S. sale that were submitted in Exhibit A–6 of Huatian's February 27, 2004, response and found that the weight for the model of hand truck covered by this shipment was actually higher than the weight reported by Huatian in its sales response. This weight was listed on a packing list generated by Huatian and a bill of lading issued by the freight forwarder. Unlike the situation with Taifa, where the weights reported in Taifa's sales response corresponded to the weight of the model in the sales/shipping documents, the information in Huatian's actual sales/shipping documents indicated that the actual weight of the model exceeded both the

weight reported in the sales response and the total weight of the material inputs. The fact that three different weights were reflected for the same model in Huatian's response indicates that Huatian did not make any attempt to check the accuracy of its response to ensure that the Department had usable data. Therefore, as we are unable to adjust Huatian's reported material usage rates on a model/part specific basis, we preliminarily find that Huatian has not cooperated to the best of its ability in providing us with fully accurate information upon which to make a determination.

As partial adverse facts available, we have taken the weight reported for the model described in the sample sales/shipping documents, and compared it to the sum of the material input weights for that model. We then computed a ratio that quantified the percentage difference between the actual net weight of that model and the reported sum of the material input weights (less packing and recoverable scrap) for that model. We applied that ratio to increase the reported input material usage rates for all models/parts.

On May 10, 2004, Huatian submitted another revised sales and FOP response in which many of the total weights in the sales response have been revised. We have been unable to analyze and clarify that information before our preliminary determination. We will, however, verify this information prior to our final determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs that normal value, in most circumstances, be based on the NME producer's factors of production, valued in a surrogate market-economy country or countries selected in accordance with section 773(c)(4) of the Act. In accordance with that provision, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed in the ''Normal Value'' section below.

The Department has determined that India, Indonesia, Sri Lanka, Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of overall economic development. *See* the March 9, 2004 memorandum from Ron Lorentzen to Susan Kuhbach regarding surrogate-country selection. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. In this case, we have found that India is a significant producer of hand trucks and that we have reliable data from India that we can use to value the factors of production. Furthermore, every party that submitted factor-valuation data provided data from India and no party argued that we should use another country as the surrogate country.

We have selected India as the surrogate country and, accordingly, we have calculated normal value using Indian prices when available and appropriate to value the factors of production of the PRC producers. We have obtained and relied upon publicly available information wherever possible. *See* the May 17, 2004 memorandum from the team to Susan Kuhbach regarding surrogate-country selection; *see also* the May 17, 2004 memorandum from the team to Susan Kuhbach regarding factor valuations for the preliminary determination (''Factor Valuation Memorandum'').

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days of the date of publication of this preliminary determination.

Fair Value Comparisons

To determine whether sales of hand trucks to the United States were made at less than fair value, we compared export price (''EP'') to normal value (''NV''), as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs by product to the appropriate product-specific NV.

U.S. Price

In accordance with section 772(a) of the Act, we used export price for Huatian, Taifa, True Potential, and Xinghua because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated. We calculated export price based on the packed F.O.B. PRC port or C.I.F. U.S. port to unaffiliated purchasers in the United States, as appropriate. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used reported factors of production for materials, energy, labor, and packing. We valued all input factors not obtained from market economies using publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based normal value. *See also Lasko Metal Products* v. *United States,* 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994). Huatian, Taifa, and Xinghua reported that some of their inputs were purchased from market economies and paid for in market-economy currency. See the ''Factor Valuations'' section below. Where respondents were unable to provide sufficient documentation that certain inputs were purchased from market-economy suppliers, we valued these inputs using surrogate values.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by each respondent for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents, see the ''Factor Valuation Memorandum.'' For a detailed description of all actual values used for market-economy inputs, see the company-specific calculation memoranda dated May 17, 2004.

Because we used Indian import values to value inputs purchased domestically by the Chinese producers, we added

surrogate freight costs to the calculated surrogate values. We calculated the freight costs by selecting the shorter of the reported distances from a domestic supplier to the factory or the distance from the nearest seaport to the factory in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). Because some of the values were not contemporaneous with the POI, we adjusted those values for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.*

Except as described below, we valued raw material inputs using the weighted-average unit import values derived from Indian import data available from the *World Trade Atlas* (Internet Version, maintained by Global Trade Information Services, Incorporated) (''Indian Import Statistics'') for the period April through August 2003.[2]

As explained above, a number of respondents purchased certain raw material inputs from market-economy suppliers and paid for them in market-economy currencies. The respondents provided evidence that indicated they paid for their market-economy purchases of inputs in a market-economy currency. Therefore, in accordance with 19 CFR 351.408(c)(1), the Department has determined to use the market-economy prices as reported by the respondents in order to value these inputs in instances where the inputs were obtained from both market-economy and NME suppliers because the market-economy inputs represent a significant quantity of the inputs and they were paid for in a market-economy currency.

Furthermore, with regard to the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries are subsidized. *See Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Administrative Review,* 61 FR 66255 (December 17, 1996), at Comment 1. We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–576 at 590 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, based on the information currently available, we have not used prices from these countries in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. Similarly, because of the export subsidies maintained by Indonesia, South Korea, and Thailand, in calculating Indian import-based surrogate values, we have not used prices from these countries.

We valued electricity using the International Energy Agency, Energy Prices & Taxes—Quarterly Statistics, First Quarter 2003. The most recent price reported for electricity in India was for the year 2000 and we adjusted the price for inflation using the U.S. producer price index.

The respondents also reported packing inputs. We used Indian import data to value these inputs.

We used Indian transport information in order to value the transportation of raw materials. To calculate domestic inland freight for trucking services, we used an April 2002, article from the Iron and Steel Newsletter which quotes *http://www.infreight.com.* We calculated the total distance in kilometers (''km'') for each city listed to Mumbai. The distances were listed on the World Wide Web at *http://www.mapsofindia.com/distances/mumbai.html.* We adjusted the rate for inflation and converted the Rupee value to U.S. dollars.

For NME-supplied marine insurance, we used a POI price quote from a U.S. insurance provider, as we have in past PRC cases. *See* July 1, 2002, memorandum to Susan Kuhbach, ''Factors of Production Values used for the Preliminary Results,'' in the 14th administrative review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

To value factory overhead expenses, selling, general, and administrative expenses (''SG&A''), and profit we calculated a rate based on publicly available financial statements from three Indian producers of comparable merchandise, Jay Equipment and Systems Private Limited, Nagori Engineers Private Limited, and Rexello Castors Private Limited. For a detailed discussion of the surrogate values for overhead, SG&A, and profit, see the Factor Valuation Memorandum.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at Import Administration's Web site, *http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm.* The source of the wage-rate data on the Import Administration's Web site is the International Labour Organization's *Yearbook of Labour Statistics 2001.*

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the monthly average exchange rates as published in the International Monetary Fund's *International Financial Statistics.*

Verification

As provided in section 782(i) of the Act, we will verify the information upon which we will rely in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average percent margin
Xinghua	216.36
Taifa	31.87
True Potential	24.62
Huatian	74.88
Shandong	76.15
Future Tool	76.15
PRC-wide Rate	346.94

The PRC-wide rate applies to all entries of the subject merchandise produced in the PRC except for entries from exporters or producers that are identified individually above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. Section 735(b)(2) requires that the ITC make a

[2] At the time of this determination, data for the month of September 2003 is not yet avaialble.

final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain (1) the party's name, address, and telephone number, (2) the number of participants, and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

We will make our final determination no later than 135 days after the date of publication of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–11676 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–824]

Silicomanganese From Brazil: Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is amending the final results of administrative review of the antidumping duty order on silicomanganese from Brazil to reflect the correction of a ministerial error in those final results. The review covers the collapsed entity of SIBRA Electrosiderurgica Brasiliera S.A. (SIBRA), Companhia Paulista de Ferro–Ligas (CPFL), and Urucum Mineracao S.A. (Urucum) (collectively ''SIBRA/CPFL/Urucum''). The period of review is December 1, 2001, through November 31, 2002.

EFFECTIVE DATE: May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Katja Kravetsky or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0108 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2004, the Department published in the **Federal Register** the final results of the administrative review of the antidumping duty order on silicomanganese from Brazil. See *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (*Final Results*). On April 15, 2004, in response to timely filed ministerial–error allegations by SIBRA/CPFL/Urucum and the Eramet Marietta Inc. (the petitioner), we issued a memorandum detailing our analysis of the ministerial–error comments. See the April 15, 2004, memorandum titled ''Silicomanganese from Brazil: Analysis of Ministerial–Error Comments'' (Ministerial–Error Memo), the public version of which is on file in the Central Records Unit in room B–099 of the main Commerce building. On April 21, 2004, the petitioner filed a timely ministerial–error allegation pertaining to the Ministerial–Error Memo. Specifically, the petitioner alleged that the Department did not include the reported manufacturing costs for 15/20–grade silicomanganese in the calculation of the weighted–average cost of production and constructed value of the 16/20–grade silicomanganese sold in the United States as it stated it had in the *Final Results*. SIBRA/CPFL did not reply to this ministerial–error allegation.

Amendment to Final Results

We have reviewed the *Ministerial–Error Memo* and the calculations in the *Final Results* and find that the error alleged by the petitioner on April 21, 2004, constitutes a ministerial error within the meaning of 19 CFR 351.224(f). For a detailed analysis of the ministerial–error allegation and the Department's position, see the Memorandum to Jeffrey May, Deputy Assistant Secretary for Import Administration, from Laurie Parkhill, Office Director, dated May 14, 2004. Pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act), we have amended the *Final Results* by correcting this error, which changes the final antidumping duty margin from 13.02 percent to 16.50 percent. Consequently, we will issue amended cash–deposit instructions to U.S. Customs and Border Protection (CBP) to reflect the amendment of the final results of review.

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review. Further, the following deposit requirements will be effective upon publication of the amended final results of this administrative review for all shipments of silicomanganese from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the amended final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for SIBRA/CPFL/Urucum will be 16.50 percent; (2) for merchandise exported by producers or exporters that were previously reviewed or investigated, the

cash–deposit rate will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered by these amended final results of review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by these amended final results of review, the cash deposit rate will be 17.60 percent, the all–others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Brazil*, 59 FR 55432, (November 7, 1994). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing these amended final results in accordance with section 751(h) of the Act and 19 CFR 351.224.

Dated: May 14, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–11678 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Stainless Steel Butt–Weld Pipe Fittings from Malaysia: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review.

SUMMARY: On March 26, 2004, in response to a request made by Schulz (Mfg.) Sdn. Bhd. (''Schulz''), a producer and exporter of the subject merchandise in Malaysia, the Department of Commerce (''Department'') published a notice of initiation of an antidumping duty administrative review on stainless steel butt–weld pipe fittings (''SSBWPF'') from Malaysia, for the period February 1, 2003 through January 31, 2004. Because Schulz has withdrawn its request for review, and there were no other requests for review for this time period, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–4243.

SUPPLEMENTARY INFORMATION:

Background

On February 29, 2004, Schulz, a producer and exporter of the subject merchandise in Malaysia, requested the Department to conduct an administrative review of its sales for the period February 1, 2003 through January 31, 2004. Schultz was the only interested party to request a review for this time period. On March 26, 2004, the Department published a notice of initiation of the antidumping administrative review on SSBWPF from Malaysia, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 69 FR 15788 (March 26, 2004). On March 31, 2004, Schulz withdrew its request for review.

Rescission of Review

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Schultz, the only interested party to request an administrative review for this time period, withdrew its request for this review within the 90–day time limit; accordingly, we are rescinding the administrative review for the period February 1, 2003 through January 31, 2004, and will issue appropriate assessment instructions to the U.S. Customs and Border Protection (''Customs'').

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: May 17, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–11677 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Honey from Argentina: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 15, 2003, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2001 through December 31, 2002. We are now issuing the final results.

Based on our analysis of the comments received, we have made no changes to the net countervailable subsidy rates for 2001 and 2002. Therefore, the final results do not differ from the preliminary results. The final net countervailable subsidy rates are listed below in the section entitled ''Final Results of Administrative Review.''

EFFECTIVE DATE: May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams–Eddine, Office of AD/CVD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4236 or (202) 482–0648, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to requests for an administrative review of the countervailing duty (CVD) order on honey from Argentina from the Government of Argentina (GOA) and the American Honey Producers Association and Sioux Honey Association (petitioners), the Department initiated an administrative review for the period January 1, 2001 through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative*

Reviews and Request for Revocation in Part, 68 FR 3009 (January 22, 2003) (*Initiation Notice*).

In its request for review, the GOA requested ''that the period of review be extended to include calendar year 2002.'' Based on our analysis of the GOA's request and the comments received from the petitioners and the GOA on this issue, the Department expanded the period of review to include 2002. Accordingly, this administrative review covers calendar years January 1, 2001 through December 31, 2001 and January 1, 2002 through December 31, 2002.[1] (See memorandum from Thomas Gilgunn to Joseph A Spetrini ''Honey from Argentina: Expansion of the Period of Review in the First Administrative Review of the Countervailing Duty Order,'' dated February 21, 2003, on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.)

On December 15, 2003, the Department published in the **Federal Register** the preliminary results of the administrative review of the countervailing duty order on honey from Argentina. *See Honey from Argentina: Preliminary Results of Countervailing Duty Administrative Review*, 68 FR 69660 (December 15, 2003) (Preliminary Results). On January 14, 2004, the Government of Argentina (GOA) and petitioners submitted case briefs regarding the Department's Preliminary Results. Both the GOA and petitioners filed rebuttal briefs on January 20, 2004. On March 31, 2004, the Department extended the deadline for completion of the final results of the administrative review of the countervailing duty order on honey from Argentina to May 17, 2004. *See Notice of Extension of Time Limit for the Final Results of Countervailing Duty Administrative Review: Honey from Argentina*, 69 FR 16895 (March 31, 2004).

Scope of the Countervailing Duty Order

The merchandise covered by this order is artificial honey containing more than 50 percent natural honeys by weight, preparations of natural honey containing more than 50 percent natural honeys by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, combs, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Bureau of Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise covered by this order is dispositive.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) dated May 17, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at http://www.ia.ita.doc.gov under the heading ''**Federal Register** Notices.'' The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made no changes to the net countervailable subsidy rates for 2001 and 2002, or to the rate of cash deposit of estimated countervailing duties which will apply to entries of honey from Argentina made on or after the date of publication of these final results of review. For a complete discussion of the Department's determination with respect to the programs under review as well as of the methodologies applied in analyzing these programs please *see* the memorandum ''Honey From Argentina: Issues and Decision Memorandum in the Final Results of Countervailing Duty Administrative Review,'' dated May 17, 2004 (*Decision Memo*).

Final Results of Administrative Review

In accordance with section 777A(e)(2)(B) of the Act, we have calculated the net countervailable subsidy rates on an aggregate or industry–wide basis for exports of subject merchandise in this administrative review. We have calculated separate rates for 2001 and for 2002. Accordingly, we determine the total net countervailable subsidy rate to be 5.77 percent *ad valorem* for 2001 and 0.57 percent ad valorem for 2002.

The Department will instruct U.S. Customs and Border Protection (CBP) to liquidate shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after March 13, 2001 and on or before July 10, 2001, and on or after December 10, 2001 and on or before December 31, 2001 at 5.77 percent *ad valorem*. Shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after January 1, 2002 and on or before December 31, 2002 will be liquidated at 0.57 percent *ad valorem*. The Department will also instruct CBP to collect cash deposits of estimated countervailing duties at 0.57 percent *ad valorem* for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Return or Destruction of Propriety Information

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(1).

Dated: May 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix 1

Issues Discussed in Decision Memorandum

Methodology and Background Information

I. Subsidies Valuation Information
  A. Aggregation
  B. Allocation Period
  C. Benchmark Interest Rate and Discount Rate

[1] For the purposes of these final results, we have analyzed data for the period January 1, 2001 through December 31, 2001 to determine the countervailable subsidy rate for exports of subject merchandise made during the periods in 2001 when liquidation of entries was suspended. In addition, we have analyzed data for the period January 1, 2002 through December 31, 2002 to determine the countervailable subsidy rate for exports during that period and to establish the cash deposit rate for subsequent exports of subject merchandise.

II. Analysis of Programs
A. Programs Determined to be Countervailable
1. Federal Programs
a. Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)
b. Factor de Convergencia (Convergence Factor)
c. Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative (Regional Productive Revitalization Program)
d. BNA Financing for the Acquisition of Goods of Argentine Origin
2. Provincial Government Programs
Province of San Luis Honey Development Program
b. Province of Chaco Line of Credit Earmarked for the Honey Sector
c. Buenos Aires Honey Program
i. Line of Credit for Working Capital
ii. Line of Credit for the Acquisition of Capital Goods
B. Program Determined To Be Not Countervailable
Provincial Program
Convenio Programa MIPyMEs Bonarenses 2000 and the Convenio Programa MIPyMEs Agropecarias Bonarense 2000
C. Programs Determined Not To Be Used
1. Federal Programs
a. BICE Norm 011: Financing of Production of Goods Destined for Export
b. BICE Norm 007: BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry
c. BNA Line of Credit to the Agricultural Producers of the Patagonia
d. BNA Pre - Financing of Exports Regime for the Agricultural Sector
e. Production Pole Program for Honey Producers
f. Enterprise Restructuring Program
g. SGRs - Government Backed Loans Guarantees
h. Fundacion Export *AR
i. PROAPI
2. Provincial Programs
a. Province of Entre Rios Honey Program
b. Province of Chubut: Province of Chabut Law No. 4430/98
c. Province of Santiago del Estero: Creditos de Confinanzas (Trust Credits)
III. Total Ad Valorem Rates
IV. Analysis of the Issues
Issue 1: Use of Facts Available
Issue 2: Use of Adverse Fact Available
Issue 3: Basis of Adverse Fact Available
Issue 4: Determination of Assessment and Cash Deposit Rates

[FR Doc. 04–11675 Filed 5–21–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, June 8, 2004, from 8:15 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include updates on NIST and the Baldrige National Quality Program, Revision of NIST 2010 Strategic Plan, Implementation of NIST Strategic Plan, Communicating the Value of NIST, as well as tours of laboratories in the Biosystems and Health areas. Discussions scheduled to begin at 8:15 a.m. and to end at 9:15 a.m. on June 8, on the NIST budget and planning information will be closed. Agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, June 3, 2004, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene on June 8 at 8:15 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 24, 2004, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: May 17, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–11601 Filed 5–21–04; 8:45 am]
BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051704C]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold public hearings to solicit comments on draft Amendment 23 to the Reef Fish Fishery Management Plan (draft Amendment 23) that contains alternatives for the vermilion snapper rebuilding plan. Scoping hearings for a charter vessel permit moratorium extension will also be held.

DATES: The meetings will be held in June 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Public comments on draft Amendment 23 that are received in the Council office by 5 p.m., July 1, 2004, will be presented to the Council.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Stu Kennedy, Fishery Biologist, Gulf of

Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Draft Amendment 23 (FMP) contains alternatives for the vermilion snapper population in the Gulf of Mexico that was declared to be overfished and undergoing overfishing on October 30, 2003. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Council has one year from that date to develop a plan to end overfishing and rebuild the stock. Draft Amendment 23 specifies alternatives to set stock status determination criteria and biological reference points that determine when overfishing has ended and the vermilion snapper stock is no longer overfished. Alternatives that establish a plan to end overfishing and rebuild the stock include 10–year and 7–year rebuilding plans and harvest reduction measures that change size limits, bag limits, trip limits, or specify quotas or seasonal closures.

Following presentation and comment on draft Amendment 23, the Council will present the scoping document for the extension of the moratorium on the issuance of additional charter vessel/headboat permits. The rule creating the moratorium on the issuance of the permits was implemented through Amendment 14 to the Coastal Migratory Pelagic FMP and Amendment 20 to the Reef Fish FMP effective June 16, 2003, for a 3–year period (68 FR 26230). The scoping document presents alternatives for consideration and comment by the public for allowing the permit moratorium to expire at the end of the 3–year period or to extend the moratorium period by another 3 to 6 years. The rationale for alternatives for extension of the moratorium is that during the extended period the Council would consider a more complex limited access system for the charter vessel/headboat fishery. If the Council were to determine the more complex system was needed then additional time would be necessary to develop and implement an amendment for that purpose. The Council is soliciting public comment on these issues through the scoping hearings and by mail.

Times and Locations of Hearings

The public hearings will be held at the following locations and dates beginning at 7:00 p.m. and concluding no later than 10 p.m.:

1. Monday, June 7, 2004, Naples Depot Civic Cultural Center (Windisch Room), 1051 5th Avenue South, Naples, FL 34102; telephone: 239–262–1776;
2. Wednesday, June 9, 2004, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33702; telephone: 727–391–9951;
3. Monday, June 21, 2004, New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone: 504–469–5000;
4. Tuesday, June 22, 2004, MS Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530; telephone: 228–374–5000;
5. Wednesday, June 23, 2004, Perdido Beach Resort, 27200 Perdido Beach Boulevard, Orange Beach, AL 36561; telephone: 251–981–9811;
6. Thursday, June 24, 2004, Destin Community Center, 101 Stahlman Avenue, Destin, FL 32541; telephone: 850–654–5184;
7. Monday, June 28, 2004, Laguna Madre Learning Center, Port Isabel High School, Highway 100, Port Isabel, TX 78578; telephone: 956–943–0052;
8. Tuesday, June 29, 2004, Port Aransas Community Center, 408 N Alister, Port Aransas, TX 78373; telephone: 361–749–4111; and
9. Wednesday, June 30, 2004, San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX 77551; telephone: 409–740–8616.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) by May 28, 2004.

Dated: May 18, 2004.

Galen R. Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–11661 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051204A]

Vessel Monitoring Systems (VMS); Certification of New VMS Unit for Use in Northeast Fisheries

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

ACTION: Notice of VMS unit certification.

SUMMARY: NMFS announces the approval and certification of the SkyMate VMS unit for use in all fisheries in the northeastern United States in which VMS units are required.

DATES: This new SkyMate VMS unit can be used effective May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Northeast Office for Law Enforcement, VMS Program, telephone 978–281–9213.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 648.9 set forth VMS requirements for fisheries in the northeastern United States that require the use of VMS for fishery monitoring and/or reporting. Specifically, § 648.9(b) lists minimum VMS performance criteria that a VMS unit must meet in order to be certified for use.

The Administrator, Northeast Region, NMFS, has reviewed all components of the SkyMate and other information provided by the vendor and has certified the following unit for use in all Northeast fisheries in which VMS units are required: SkyMate VMS, available from SkyMate Inc., 14000 Willard Road, Suite #2, Chantilly, VA, 20151; phone 703–636–4220 or 866–SKYMATE; fax 703–814–8585; email *skymate.com*.

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

Dated: May 18, 2004.

Galen R. Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–11662 Filed 5–21–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 18, 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: May 25, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, the recrediting of unused carryforward, swing, and special swing.

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 68599, published on December 9, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 18, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on May 25, 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	Twelve-month restraint limit [1]
Specific limits	
219	16,684,302 square meters.
226/313	210,286,304 square meters.
237	485,752 dozen.
239pt. [2]	2,906,309 kilograms.
314	12,259,021 square meters.
315	146,872,240 square meters.
317/617	65,877,924 square meters.
331pt./631pt. [3]	1,281,606 dozen pairs.
334/634	686,974 dozen.
335/635	830,721 dozen.
336/636	1,084,925 dozen.
338	8,620,945 dozen.
339	2,995,080 dozen.
340/640	1,667,228 dozen of which not more than 625,209 dozen shall be in Categories 340–D/640–D [4].
341/641	1,918,508 dozen.
342/642	757,690 dozen.
347/348	1,671,615 dozen.
351/651	930,459 dozen.
352/652	2,022,739 dozen.
359–C/659–C [5]	1,968,990 kilograms.
360	10,012,491 numbers.
361	11,642,429 numbers.
363	74,329,303 numbers.
369–S [6]	1,427,190 kilograms.
613/614	46,034,344 square meters.
615	48,972,697 square meters.
625/626/627/628/629	117,945,866 square meters of which not more than 75,309,073 square meters shall be in Category 625; not more than 75,309,073 square meters shall be in Category 626; not more than 75,309,073 square meters shall be in Category 627; not more than 15,581,189 square meters shall be in Category 628; and not more than 75,309,073 square meters shall be in Category 629.
638/639	1,197,103 dozen.
647/648	2,458,801 dozen.
666–P [7]	1,348,363 kilograms.
666–S [8]	7,138,388 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] 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.

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[5] 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.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–11603 Filed 5–21–04 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

RIN 0720–ZA05

Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity

AGENCY: Department of Defense.

ACTION: Notice of a TRICARE Demonstration Project for the State of Alaska; correction.

SUMMARY: The Department of Defense published a notice entitled TRICARE Demonstration Project for the State of Alaska on May 18, 2004 (74 FR 28124). This document corrects the effective date for that notice. The effective date is corrected to read as follows:

EFFECTIVE DATE: Effective with the start date of health care delivery on July 1, 2004 for the current TRICARE Regions 9, 10 and 12 within the TRICARE Management Activity Health Services and Support Contract for the Western Region.

ADDRESSES: TRICARE Management Activity (TMA), Regional Operations Directorate, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206. All other information remains unchanged.

Dated: May 19, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison, Officer, Department of Defense.

[FR Doc. 04–11685 Filed 5–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming 2004 Summer Session Meeting. The purpose of the meeting is to develop recommendations for the Air Force from FY04 studies. This meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (c)(1) and (4) thereof. Much of the discussion and work will be classified, and the studies will be discussing substantial amounts of contractor-proprietary information.

DATES: 21 June–1 July 2004.

ADDRESSES: The Arnold and Mabel Beckman Center, Irvine CA.

FOR FURTHER INFORMATION CONTACT: Lt Col Nowack, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–11638 Filed 5–21–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, The Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 23, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Logistics Agency Headquarters, ATTN: Public Affairs Office, 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Defense Logistics Agency Office of Public Affairs at (703) 767–6200.

Title; Associated Form; and OMB Number: Defense Logistics Agency Readership Survey—Dimensions magazine.

Needs and Uses: The Defense Logistics Agency (DLA) is evaluating its public affairs practices to include requesting feedback from readers of its publications. DLA needs to learn how we can better serve our readers and how we are already succeeding. The survey information will be used by DLA to help us improve the customer focus of our publications.

Affected Public: Recipients of DLA Dimensions magazine.

Annual Burden Hours: 150.

Number of Respondents: 900.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals/military service members/federal employees/industry who are on the mailing list for Dimensions magazine. The survey will seek information concerning their opinions about the articles in the publication. Participation in the survey will be voluntary.

Dated: May 19, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–11686 Filed 5–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 23, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Transition to Teaching Grant Program.

Frequency: Other.

Affected Public: State, local, or tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 859.

Burden Hours: 859.

Abstract: The purpose of the Transition to Teaching (TTT) Grant Program evaluation is to assess how well the 94 grantees funded in 2002 have met the goals of the program: to recruit participants from three eligible groups, to retain TTT participants in teaching for 3 years; and to facilitate full certification of participants. This request is to gather program-level data

from the project directors and to conduct a survey from a sample of TTT participants in 2004.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2480. 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, 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 Katrina Ingalls at her e-mail address *Katrina Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–11604 Filed 5–21–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from January 2, 2004, through March 31, 2004.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507 (press 3).

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 a copy of this notice 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: The following list identifies correspondence from the Department issued from January 2, 2004, through March 31, 2004.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability

○ Letter dated February 2, 2004, to individual (personally identifiable information redacted), clarifying that if a child is evaluated as having one of the disabilities specified in the definition of child with a disability in 34 CFR 300.7(a)(1), and, by reason of that disability, needs special education and related services, a public agency may not deny the provision of a free appropriate public education (FAPE) to the child because the child is advancing from grade to grade.

Section 605—Acquisition of Equipment; Construction or Alteration of Facilities

Topic Addressed: Construction of Facilities

○ Letter dated March 26, 2004, to Mississippi Water Valley School District Program Developer Butch Stevens listing the general principles for determining whether expenditures for construction of facilities are allowable under the IDEA.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Distribution of Funds

○ OSEP memorandum 04–07 dated March 1, 2004, regarding implementation of the funding formula under the IDEA, specifically the year of age cohorts for which FAPE is ensured.

Topic Addressed: Distribution of Funds Provided to the Secretary of the Interior

○ Letter dated January 20, 2004, to Bureau of Indian Affairs Special Education Director Keith Neves, clarifying that in order to comply with the requirements of section 611(i) of IDEA, the Bureau of Indian Affairs (BIA) must be able to demonstrate that for each Federal fiscal year as specified in its grant award letter, 80 percent of its section 611(c) funds are used to provide special education and related services to children with disabilities ages 5 through 21 enrolled in BIA operated or funded schools and 20 percent of its section 611(c) funds are distributed to the tribes or tribal organizations for the coordination of services for children with disabilities ages 3 through 5.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

○ Letter dated January 28, 2004, to individual (personally identifiable information redacted), clarifying that the IDEA does not require that private schools provide special education and related services that meet the needs of all students with disabilities, and it does not require that States certify all private schools to provide services to all students.

Topic Addressed: Confidentiality of Education Records

○ Letter dated February 25, 2004, to Alabama Department of Education State School Nurse Consultant Martha Holloway from Family Policy Compliance Office Director LeRoy S. Rooker, explaining, in response to an inquiry regarding immunization records of students, that the Health Insurance Portability and Accountability Act of 1996 did not apply because the records were education records subject to the Family Educational Rights and Privacy Act (FERPA), and explaining limitations to the ''health and safety emergency'' exception under FERPA.

○ Letters dated February 25, 2004, to Pennsylvania Department of Education Assistant Counsel Amy C. Foerster and February 18, 2004, to California Department of Education Special Education Consultant Dr. Allan M. Lloyd-Jones from Family Policy Compliance Office Director LeRoy S. Rooker, clarifying the requirements under FERPA and the IDEA regarding the release of education records in connection with studies conducted by other agencies or organizations

pertaining to autism and other developmental disabilities.

Section 615—Procedural Safeguards

Topic Addressed: Independent Educational Evaluations

○ Letter dated February 20, 2004 to California Department of Education Assistant Superintendent Alice D. Parker, regarding the rights of parents in the selection of an evaluator to perform an independent educational evaluation.

Part C—Infants and Toddlers With Disabilities

Section 635—Requirements for Statewide System

Topic Addressed: Child Find

○ Letter dated February 12, 2004, to individual (personally identifiable information redacted), regarding the State lead agency's child find responsibilities under Part C of IDEA and whether a hospital can disclose information regarding an infant or toddler to a State's lead agency.

Section 636—Individualized Family Service Plan

Topic Addressed: Transition

○ Letter dated February 11, 2004, to Texas Interagency Council on Early Childhood Intervention Executive Director Mary Elder, regarding whether parental consent is required to disclose referral information from a lead agency under Part C of IDEA to the State education agency or local education agency about children who will shortly turn three and transition from receiving early intervention services under Part C to potentially receiving special education and related services under Part B.

Part D—National Activities To Improve Education of Children With Disabilities

Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

Section 687—Technology Development, Demonstration, and Utilization; and Media Services

Topic Addressed: Captioning

• Letter dated January 14, 2004, to individual (personally identifiable information redacted), regarding the types of programming that could be captioned using IDEA funds.

Other Letters That Do Not Interpret the Idea But May Be of Interest to Readers

Topic Addressed: Accountability

• Letter to Chief State School Officers dated March 2, 2004, providing guidance under the No Child Left Behind Act of 2001 (NCLB) regarding how States might seek an exception to the requirements regarding the number of proficient scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards that may be included in annual yearly progress decisions.

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/index.html.*

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 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 84.027, Assistance to States for Education of Children with Disabilities)

Dated: May 14, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–11681 Filed 5–21–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169-020]

Alcoa Power Generating, Inc. (APGI); Notice of Settlement Agreement and Soliciting Comments

May 14, 2004.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement.

b. *Project No.:* 2169–020.

c. *Date Filed:* May 7, 2004.

d. *Applicant:* Alcoa Power Generating, Inc. (APGI).

e. *Name of Project:* Tapoco Project.

f. *Location:* On the Little Tennessee and Cheoah Rivers in Graham and Swain Counties, North Carolina and Blount and Monroe Counties, Tennessee. The project affects Federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Norman L. Pierson, Property and Relicensing Manager, Alcoa Power Generation Inc., Tapoco Division, 300 North Hall Road, Alcoa, TN 37701–2516, (865) 977–3326.

i. *FERC Contact:* Randy Yates at (770) 452–3784, or *lorance.yates@ferc.gov*.

j. *Deadline for Filing Comments:* The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the 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 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.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

k. Alcoa Power Generating, Inc. (APGI) filed the Comprehensive Settlement Agreement on behalf of itself and 22 other stakeholders. The purpose of the Settlement Agreement is to resolve, among the signatories, all issues related to APGI's pending Application for a New License for the Tapoco Hydroelectric Project. The issues resolved through the settlement relate to project operations; modifying impoundment rule curves; minimum flows; fish reintroductions; development of vegetation and rare, threatened and endangered species management plans; additions and improvements to recreation facilities; certain land use issues; and cultural resources management. APGI requests that the Commission approve the Settlement Agreement and incorporate

proposed license articles outlined in the Settlement Agreement into a new 40-year license for the project.

l. A copy of the Settlement Agreement 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 ''e-Library'' link. Enter the docket number, excluding the last three digits 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.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1205 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–334–000]

CenterPoint Energy— Mississippi River Transmission Corp.; Notice of Application

May 17, 2004.

Take notice that on May 10, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (CenterPoint-MRT), 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP04–334–000 pursuant to section 7(b) of the Natural Gas Act, an application for permission and approval to abandon a significant portion of its main line no. 1 located in Louisiana, Arkansas, and Missouri and two compressor stations located in Arkansas. Specifically, CenterPoint-MRT proposes to abandon; approximately 307 miles of main line no. 1 from its compressor station at Perryville, Louisiana to CenterPoint-MRT's compressor station in Poplar Bluff, Missouri; a backup interconnect between main line no. 1 and facilities owned by Natural Gas Company of America located in Randolph County, Arkansas; the Diaz and Sherrill compressor stations located in Arkansas; in addition, CenterPoint-MRT seeks to abandon by sale to CenterPoint Energy Gas Transmission Company (CenterPoint) an 18.3 mile-mile segment of main line no. 1 that extends from CenterPoint-MRT's Glendale compressor station to the town of Pine Bluff, Arkansas, all as more fully described in the request which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

CenterPoint-MRT states that main line no. 1 was originally installed in 1929, and that the age and mechanically coupled pipe of which the facilities are constructed are causing operational problems for CenterPoint-MRT. CenterPoint-MRT further states that service from its field zone to its market zone is currently served by main line nos. 2 and 3, in addition to main line no.1, and that main line nos. 2 and 3 would continue to provide CenterPoint-MRT's field zone to market zone service. The abandonment will not affect CenterPoint-MRT's ability to meet its firm service obligations.

Accordingly, CenterPoint-MRT requests permission and approval to abandon the facilities as more fully described in the application.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Financial Analysis, CenterPoint Energy—Mississippi River Transmission Corporation, P.O. Box 21734, Shreveport, Louisiana 71101, or call (318) 429–2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests, interventions, and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1203 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04-683-000]

New Light Energy, LLC; Notice of Issuance of Order

May 17, 2004.

New Light Energy, LLC (New Light) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity and energy services at market-based rates. New Light also requested waiver of various Commission regulations. In particular, New Light requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by New Light.

On May 14, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by New Light should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is June 14, 2004.

Absent a request to be heard in opposition by the deadline above, New Light is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of New Light, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of New Light's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the elibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1204 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–39–000; CP02–40–000; CP02–41–000; and CP02–42–000]

Pacific Gas and Electric Co.; Standard Pacific Gas Line Incorporated; Trans LLC; PG&E Gas Transmission, Northwest Corp.; Notice of Effective Date of Withdrawal

May 17, 2004.

Take notice that on April 13, 2004, Pacific Gas and Electric Company, Standard Pacific Gas Line Incorporated, GTrans LLC and Gas Transmission Northwest Corporation (formerly PG&E Gas Transmission, Northwest Corporation) (collectively, ''Applicants'') filed a Notice of Withdrawal. Applicants seek to withdraw the application filed on November 30, 2001, and to terminate the present proceedings in the above referenced dockets.

Under section 385.216(b) of the Commission's Regulations, a withdrawal of a pleading is effective 15 days after the withdrawal if no motion opposing the withdrawal is filed. No motion opposing the withdrawal was filed. Accordingly, the effective date of the withdrawal is April 28, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1202 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–105–000, et al.]

Commonwealth Atlantic Limited Partnership, et al.; Electric Rate and Corporate Filings

May 17, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Commonwealth Atlantic Limited Partnership; Exodus Energy LLC; and Exodus Energy Commonwealth Holdings LLC

[Docket Nos. EC04–105–000 and ER90–24–003]

Take notice that on May 12, 2004, Commonwealth Atlantic Limited Partnership, Exodus Energy LLC and Exodus Energy Commonwealth Holdings LLC (together, Applicants) filed with the Commission an application under section 203 of the Federal Power Act for authorization and notice of change in status with respect to an indirect transfer of an approximately 49.999 percent of the partnership interests in Commonwealth Atlantic Limited Partnership to Exodus Energy LLC. Applicants state that the jurisdictional facilities transferred consist of books and records, Commonwealth Atlantic Limited Partnership's market-based rate tariff and related contracts, and the interconnection equipment associated with the generating facility.

Comment Date: June 1, 2004.

2. Duke Energy North America, LLC, Duke Energy Trading and Marketing, L.L.C., Duke Energy Marketing America, LLC and KGen Partners, Inc.

[Docket No. EC04–106–000]

Take notice that on May 13, 2004, Duke Energy North America, LLC (DENA), Duke Energy Trading and Marketing, L.L.C. (DETM), Duke Energy Marketing America, LLC (DEMA), and KGen Partners LLC (KGen) filed with the Commission a joint application pursuant to section 203 of the Federal Power Act for Commission approval of the transfers of direct and indirect interests in jurisdictional facilities. Specifically, DENA proposes to transfer to KGen the membership interests in jurisdictional facilities. Specifically, DENA proposes to transfer to KGen the membership interests DENA owns in the following companies: Duke Energy Enterprises, LLC; Duke Energy Hinds, LLC; Duke Energy Hot Springs, LLC; Duke Energy Marshall County, LLC; Duke Energy Murray LLC; Duke Energy New Albany, LLC; Duke Energy Sandersville, LLC; and Duke Energy Southaven, LLC (collectively, the Project Companies). DENA states that each of the Project Companies either directly owns or controls a generation facility located in the Southeastern Electric Reliability Council region of United States. DETM and DEMA propose to assign to either KGen or one of the Project Companies certain related wholesale power sale and purchase agreements.

DENA states that copies of this Joint Application are being served upon the Public Utilities Commissions of the States of Kentucky, Arkansas, Mississippi, and Georgia.

Comment Date: June 17, 2004.

3. Riverside Energy Center, LLC

[Docket No. EC04–107–000]

Take notice that on May 13 2004, Riverside Energy Center, LLC (Applicant) tendered for filing an application under section 203 of the Federal Power Act for approval of the acquisition of the securities of Rocky Mountain Energy Center, LLC, an affiliated public utility.

Comment Date: June 3, 2004.

4. Duke Energy Enterprise, LLC; Duke Energy Hinds, LLC; Duke Energy Hot Spring, LLC; Duke Energy Marshall County, LLC; Duke Energy Murray, LLC; Duke Energy New Albany, LLC; Duke Energy Sandersville, LLC; and Duke Energy Southaven, LLC

[Docket Nos. ER02–565–005; ER01–691–006; ER02–694–005; ER02–530–006; ER02–302–006; ER02–171–005; ER02–1024–006; and ER02–583–005]

Take notice that on May 13, 2004, KGen Partners LLC (KGen) filed with the Commission notifications of a change in status with respect to the Commission's grant of market-based rate authority to Duke Energy Enterprise, LLC, Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Marshall County, LLC, Duke Energy Murray, LLC, Duke Energy New Albany, LLC, Duke Energy Sandersville, LLC and Duke Energy Southaven, LLC (the Project Companies). KGen states that the change in status will result from the disposition of jurisdictional facilities that will occur in connection with the transfer by Duke Energy North America, LLC (DENA) to KGen of all of DENA's membership interests in the Project Companies. KGen further states that the notifications of change of status for each of the Project Companies are conditioned on the approval of a separate section 203 application filed concurrently with this filing (section 203 Application) and the closing of the proposed transaction for which the section 203 Application seeks approval.

Comment Date: June 3, 2004.

5. WPS Canada Generation, Inc., Maine Public Service Company, and the Northern Maine Independent System Administrator, Inc.

[Docket Nos. ER03–689–003 and ER04–210–001]

Take notice that on May 13, 2004, WPS Canada Generation, Inc. (WPS Canada) tendered for filing with the Commission a refund report as required by the February 10, 2004, settlement agreement that was accepted by Commission in the order issued April 14, 2004, in Docket No. ER03–689–000, *et al.*, 107 FERC ¶ 61,020.

WPS Canada states that copies of the filing were served on Maine Public Service Company, the Maine Public Utilities Commission, the Northern Maine Independent System Administrator, Inc. and the official service list in the above-captioned proceeding.

Comment Date: June 3, 2004.

6. Cleco Power LLC

[Docket No. ER04–838–000]

Take notice that on May 13, 2004, Cleco Power LLC (Cleo Power), tendered for filing a Third Revised Service Agreement No. 66, under FERC Electric Tariff Original Volume No. 1. Cleco Power LLC states that the filing reflects revisions to the agreement made in section 1.3, Commercial Operation Date and that the Commercial Operation Date of June 1, 2005, has been revised to reflect a later date of June 1, 2006. Cleco Power requests an effective date of June 1, 2004.

Comment Date: June 3, 2004.

7. MAG Energy Solutions, Inc.

[Docket No. ER04–839–000]

Take notice that on May 13, 2004, MAG Energy Solutions, Inc. (MAG E.S.) filed a request for acceptance of MAG E.S. Rate Schedule FERC No. 1; the grant of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. MAG E.S. states that (1) it is an independent Canadian corporation with no affiliation of any kind with other corporations; (2) it intends to engage in wholesale electric power and energy purchases and sales as a marketer; and (3) that it is not in the business of generating or transmitting electric power.

Comment Date: June 3, 2004.

8. American Electric Power Service Corporation

[Docket No. ER04–840–000]

Take notice that on April 29, 2004, American Electric Power Service Corporation (AEP) on behalf of Kentucky Power Company and EnviroPower, L.L.C., filed (1) a request for withdrawal of AEP's Notice of Cancellation of an Interconnection and Operations Agreement between AEP and Kentucky Mountain Power, L.L.C., a subsidiary of EnviroPower filed on November 18, 2003, in Docket No. ER04–200–000; (2) a request for withdrawal EnvironPower's Motion for Leave to Intervene Out-of-time and Application for Rehearing or Reconsideration filed on February 11, 2004, in Docket No. ER04–200–002; and (3) a request by AEP and EnviroPower for the Commission to vacate the Letter Orders issued January 12 and 13, 2004, in Docket No. ER04–200–000.

Comment Date: May 27, 2004.

9. USGen New England, Inc.

[Docket No. ER04–841–000]

Take notice that on May 14, 2004, USGen New England, Inc. (USGenNE) filed, pursuant to section 205 of the Federal Power Act, a Reliability Agreement between the ISO New England Inc. (the ISO) and USGenNE for USGenNE's 763 MW Salem Harbor generation station located in Salem, Massachusetts. USGenNE states that the Reliability Agreement was negotiated between USGenNE and the ISO pursuant to section 18.5 of the Restated NEPOOL Agreement. USGenNE requests that the Commission issue an order within sixty (60) days of the date of the filing, or otherwise as expeditiously as possible. USGenNE further requests that the Commission grant a waiver of certain of the Commission's filing requirements in part 35 of the Commission's regulations, including the 60 and 120-day prior notice requirements to the extent necessary to permit the Reliability Agreement to become effective as described in the filing.

Comment Date: June 4, 2004.

10. PurEnergy Caledonia, LLC and Caledonia Energy, LLC

[Docket Nos. ER04–842–000 and ER01–1383–003]

Take notice that on May 13, 2004, PurEnergy Caledonia, LLC (PurEnergy Caledonia) submitted for filing with Commission its triennial updated market analysis in accordance with Appendix A of the Commission's April 27, 2001, Letter Order to Caledonia Generating, LLC in Docket No. ER01–1383–000. PurEnergy Caledonia states that it is the successor in interest to the market-based rate authority of Caledonia Generating, LLC. *See* Caledonia Generating, LLC, *et al.*,105 FERC ¶ 62,014 (2003). PurEnergy Caledonia also submitted certain revisions to its FERC Electric Tariff, Original Volume No. 1 to incorporate the Market Behavior Rules set forth in Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: June 3, 2004.

11. Calpine King City Cogen, LLC

[Docket Nos. QF85–735–005 and EL04–101–000]

Take notice that on May 12, 2004, Calpine King City Cogen, LLC (Applicant) tendered for filing a petition for limited waiver of the Commission's operating standard for a topping-cycle cogeneration facility.

Comment Date: June 11, 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. E4–1199 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL03–3–005; AD03–7–005; ER03–1271–000; CP01–418–000; CP03–7–001; CP03–301–000; RP03–245–000; RP99–176–089 and RP99–176–094; RP02–363–002; RP03–398–000; RP03–533–000; RP03–70–002 and RP03–70–003; CP01–421–000 and CP01–421–001; RP03–540–000 (Not Consolidated)]

Price Discovery in Natural Gas and Electric Markets; Natural Gas Price Formation; Aquila, Inc.; B–R Pipeline Company; Colorado Interstate Gas Company; Colorado Interstate Gas Company, et al.; Kinder Morgan Interstate Gas Transmission LLC; Natural Gas Pipeline Company of America; North Baja Pipeline LLC; Northern Natural Gas Company; Northern Natural Gas Company; PG&E Gas Transmission, Northwest Corporation; Portland General Electric Company; Transcontinental Gas Pipe Line Corporation; Notice of Conference on Market Liquidity, Energy Price Discovery, and Natural Gas and Electricity Price Indices

May 14, 2004.

The Federal Energy Regulatory Commission (Commission) will hold a conference on the overall level of liquidity in wholesale natural gas and electricity markets, the adequacy of natural gas and electricity price formation, the level of reporting of energy transactions to price index developers, and the use of price indices in jurisdictional tariffs. The conference will take place on Friday, June 25, 2004, from 9:30 a.m. to 5 p.m., at the Commission's headquarters, 888 First Street, NE., Washington, DC. The conference will be conducted by the Commission's Staff but may be attended by members of the Commission. A quorum of the Commission may be present for all or part of the conference. The Commodity Futures Trading Commission (CFTC) will participate.

Background

On May 5, 2004, the Commission Staff issued a *Report on Natural Gas and Electricity Price Indices* in which Staff reviewed Commission actions and developments since the issuance of the Commission's *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2004), including particularly the results of the Commission's March 2004 survey of market participants. The Report identified four broad options for future Commission action and addressed the use of price indices in jurisdictional tariffs, including specific recommendations on price index developers' adherence to Policy Statement standards and the criteria pursuant to which an index may be used in jurisdictional tariffs. The Report also included an extensive technical appendix providing tabulated results of the voluntary survey conducted by the Commission in March 2004.

Staff has held previous conferences and workshops in Docket No. AD03–7 on April 24, 2003, June 24, 2003, July 2, 2003, and in both Dockets on November 4, 2003. Information gathered from such conferences has been of material use to the Commission in understanding the range of issues confronting market participants in their varied uses of energy price indices, and of the uses of indices in jurisdictional tariffs. The June 25 conference will provide all interested parties an opportunity to develop the record further in light of the information and recommendations presented in the Staff Report.

Scope of Conference

The conference is open to discussion of all issues relevant to the formation of natural gas and electricity wholesale prices and the role of price indices both in the price formation process and as used by pipelines and utilities in jurisdictional tariffs. In particular, the Commission is interested in the following subjects:

1. *The overall market liquidity context for natural gas and electricity transaction reporting, and an evaluation of the extent to which wholesale energy trading is sufficient to generate reliable price signals for market participants.* Many parties commented that improving processes for price reporting and increasing the number of companies reporting their fixed price day-ahead and bid-week transactions, while laudable, still does not address the decline in activity in energy markets, raising the concern that liquidity in these markets is inadequate to generate strong confidence in the prices observed. Parties are invited to comment on trading activity in energy markets and the optimum structures for encouraging robust and transparent trading in natural gas and electricity.

2. *Current status of energy transaction reporting to index developers and adequacy and robustness of indices.* The Staff Report indicates that about 20 percent of companies surveyed report all of their ''reportable'' day-ahead and bid-week natural gas transactions and about 10 percent of companies surveyed report all of their day-ahead electricity

transactions. At the same time, survey results indicate that, for responding companies that do report their transactions, there has been a significant improvement in key elements of the reporting process. As to natural gas and electricity indices themselves, the Report indicates most index developers have taken significant steps to adopt the Policy Statement standards. Nevertheless, many market participants still would like to have more information about the trading from which index prices are calculated. Parties are encouraged to discuss the import of the current level of price reporting and how price indices can best serve industry needs.

3. *Options for future Commission action on price indices and wholesale price formation.* The Staff Report outlined four general options for future Commission action on price formation issues. Parties are welcome to comment on the pros and cons of each of these options and recommend the most effective Commission action given current circumstances:

• *Accept Current Progress.* The Commission could end active involvement with price formation issues and permit the industry to address issues without any formal structure or further guidance from the Commission.

• *Continue To Focus Attention.* The Commission could actively encourage the industry to implement the Policy Statement fully and closely monitor the level of trading activity reported by price index developers as well as compliance with the Policy Statement standards for reporting and index development.

• *Introduce Mandatory Reporting.* The Commission could move toward some form of mandatory price reporting of energy trade data, as some parties have urged over the past several months.

• *Encourage Greater Reliance on Platforms for Trading, Confirmation/Settlement and Clearing.* Some parties have observed that the most open forum for obtaining accurate price information is trading on an electronic platform. In additional to electronic platforms for trading, platforms set up to facilitate confirmations/settlements and clearing have potential to further aggregate transactions for the purpose of forming more robust price indexes at low incremental costs. The Commission could encourage greater industry use of electronic platforms in price formation, in conjunction with any of the three other options.

• 4. *Review of survey response data.* The Staff Report provided a detailed technical appendix tabulating the responses to all questions asked in the March 2004 survey. Interested parties are encouraged to examine the results of the survey and to offer observations on the tabulations or further analysis of the data. Questions concerning the data provided in the appendix should be directed to Rafael Martinez at 202–502–6336, or by e-mail at *Rafael.Martinez@run spell.gov*.

Staff continues to review the data generated by the survey results. Requests for specific further examination or explanation of the results by Staff should be filed in Docket Nos. PL03–3–04 and AD03–7–004. Staff will consider any such filings in the continuing review of survey data.

5. *Criteria for Use of Indices in Jurisdictional Tariffs.* In the Policy Statement, the Commission required, prospectively, that price indices in tariffs meet the Policy Statement standards and reflect adequate liquidity at the referenced pricing points. In certain cases, the Commission issued orders on tariff filings noting this requirement and calling for a Staff report on the index in question, with comments and additional evidence by the filing pipeline and intervenors to be submitted 15 days thereafter.[1]

In the Staff Report, Staff made the following recommendations concerning the use of price indices in jurisdictional tariffs:

• *Price Index Developer Compliance.* Staff recommends that six price index developers—Argus Media, Energy Intelligence Group, Inc., IntercontinentalExchange Inc., Io Energy, Intelligence Press, Inc., and Platts—be deemed to be in substantial compliance with the standards of the Policy Statement, and that Bloomberg, Btu/DTN, and Dow Jones be deemed conditionally to be in substantial compliance.

• *Access to Confidential Data.* Staff qualifies its assessment that most price index developers are in substantial compliance with a recommendation that the price index developers should affirm they will provide the Commission with access to relevant data in the event of an appropriate request for data in connection with an investigation into possible false price reporting or price manipulation.

• *Additional Information To Be Supplied by Indices Used in Jurisdictional Tariffs.* Staff recommends, effective September 1, 2004, any published index used in a jurisdictional tariff must regularly provide the volumes and the number of transactions from which the prices at all referenced locations are derived. If there were no transactions but a price assessment or estimate is supplied, the index must so state.

• *Minimum Level of Activity.* For each index location used in a jurisdictional tariff, Staff recommends the published index must report a minimum level of activity at that location, measured by volumes or number of transactions at the relevant location(s). The minimum volume levels are 25,000 MMBtu/day or 4000 MWh/day, and the minimum transaction levels are five trades (daily index), eight trades (weekly index), or ten trades (monthly index).

• *Evaluation Period.* Staff recommends indices be evaluated under the volume and transaction number criteria for a historical 90 day period (or one year for monthly indices). If an index does not supply volume and transaction number information for 90 previous days (or one year for monthly indices), the index may continue to be used in the tariff until the review period can be evaluated, so long as the index has begun regular publication of volumes and transaction numbers by September 1, 2004.

• *Deferral of Action in Pending Cases.* Staff recommends further Commission action in cases in which changes have been made to index references in tariffs be deferred pending comments on the criteria recommended in the Staff Report.[2]

[1] *See, e.g., Transcontinental Gas Pipe Line Corporatione*, 104 FERC ¶ 61,181 at P 11 (2003); *Northern Natural Gas Company*, 104 FERC ¶ 61,182 at P 8 (2003); *Natural Gas Pipeline Company of America*, 104 FERC ¶ 61,190 at P 8 and 105 FERC ¶ 61,269 at P 5 (2003); *Kinder Morgan Interstate Gas Transmission LLC*, 105 FERC ¶ 61,035 at P 18 (2003); and *Northern Natural Gas Company*, 105 FERC ¶ 61,172 at P 86 (2003).

[2] As noted, in certain of the above-captioned cases, the Commission accepted newly filed tariff sheets making changes in indices utilized in jurisdictional tariffs, pending further action after receipt of a Staff report on the adoption of Policy Statement standards by the index publisher involved and on the adequacy of liquidity at the specific referenced locations. These cases are Transcontinental Gas Pipe Line Corporation, Docket No. RP03–540–000; Northern Natural Gas Company, Docket No. RP03–533–000; Natural Gas Pipeline Company of America, Docket Nos. RP99–176–089 and –094; Kinder Morgan Interstate Gas Transmission LLC, Docket No. RP03–245–000; and Northern Natural Gas Company, Docket No. RP03–398–000.

In addition, similar tariff filings have been made in Aquila, Inc., Docket No. ER03–1271–000; Portland General Electric Company, Docket Nos. CP01–421–000 and –001; Colorado Interstate Gas Company, *et al.*, Docket Nos. CP03–301–000, *et al.*; PG&E Gas Transmission, Northwest Corporation, Docket Nos. RP03–70–002 and –003; Colorado Interstate Gas Company, Docket No. CP03–7–001, North Baja Pipeline LLC, Docket No. RP02–363–002, and B–R Pipeline Company, Docket No. CP01–418–000. These latter cases did not include a specific requirement for a Staff report, but the same issues are present, and parties to those cases are

• *Use of Approved Indices.* Once an index and specific locations have been accepted by the Commission for use in a tariff, Staff recommends the use of the index and locations may continue until the pipeline or utility files a change in the index used in the tariff or an affected party seeks a change in the index being used based on the criteria no longer being met.

Comments

The Commission encourages interested parties to submit comments in advance of the conference. To the extent parties share similar interests, joint submissions are encouraged. Comments may address any of the subjects discussed above or other issues related to market liquidity, price formation, and price indices. Review of and comment on the tabulated survey results is also encouraged.

In particular, the companies and intervenors in the above-captioned individual tariff dockets are encouraged to file comments and additional evidence on (a) the extent to which the publishers of the price indices used in those tariffs meet Policy Statement standards and (b) whether the criteria proposed by Staff to determine if the specific locations reflect adequate liquidity should be applied to the indices filed in those tariffs.

All comments, including those in the above-captioned tariff dockets, should be filed by June 11, 2004.[3] Additional evidence on the suitability of the chosen index or indices should be filed in the individual tariff dockets.[4] Comments may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Conference Information

There is no charge to attend the conference and no requirement to register in advance for the conference. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives them.

Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

Interested parties are urged to watch for further notices providing more information on the conference. For additional information please contact Ted Gerarden, 202–502–6187 or by e-mail at *Ted.Gerarden@ferc.gov*. For questions pertaining to the technical appendix to the Staff Report, please contact Rafael Martinez at 202–502–6336, or by e-mail at *Rafael.Martinez@ferc.gov*.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1206 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

hereby placed on notice that a Commission decision on the criteria recommended in the Staff Report may be applied in their cases.

[3] The Commission pointed out that the pipeline or utility filing the change in index use in its tariff has the ultimate burden of showing that its proposed index use is just and reasonable. *See, e.g., Transcontinental Gas Pipe Line Corporation*, 104 FERC ¶ 61,181 at P 14 (2003); *Northern Natural Gas Company*, 104 FERC ¶ 61,182 at P 10 (2003).

[4] The June 11, 2004, comment date supersedes the previous requirement to file comments and additional evidence within 15 days of issuance of the Staff report in the tariff dockets identified in n.1, *supra*.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–5–000]

Northeast Energy Infrastructure Conference; Notice of Technical Conference and Agenda

May 14, 2004.

As announced in the Notice of Conference issued on April 1, 2004, the Federal Energy Regulatory Commission (FERC) will hold a conference on June 3, 2004, in New York City to discuss issues regarding energy infrastructure in the northeastern States. These States include Maine, Vermont, New Hampshire, New York, Massachusetts, Connecticut, and Rhode Island. The conference will begin at 9 a.m. (please note time change) and conclude at approximately 5 p.m. (e.s.t.), and will be held at the Hilton New York, 1335 Avenue of the Americas, New York, NY (1–212–586–7000). All interested persons are invited to attend. There is no registration fee.

The conference will focus on the adequacy and development of the electric, natural gas and other energy infrastructure in the Northeast. The FERC Commissioners will attend, and Governors, state utility commissioners, and other government officials have been invited to participate. The purpose of this conference is two-fold: To identify the challenges that face the Northeast in ensuring adequate energy supplies to high-growth areas and to coordinate our efforts in seeking solutions. By engaging experts and policymakers in a comprehensive, collaborative approach, we will pool our efforts into achieving a well-functioning infrastructure necessary to meet the Northeast's energy demands.

The conference agenda is appended to this notice. The conference is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

Opportunities for Listening to and Obtaining Transcripts of the Conference

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Although there is no registration fee, this is a reminder to please register for the conference online on the Commission Web site at *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=896&Date=6%2f3%2f2004&CalendarID=0.*

Questions about the conference program should be directed to: Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, *carol.connors@ferc.gov*, 202–502–8870.

Magalie R. Salas,

Secretary.

Conference Agenda

Hilton New York, 1335 Avenue of the Americas, New York, NY, June 3, 2004.

I. Opening Remarks and Introductions

9 a.m. to 9:10 a.m.

Chairman Pat Wood III, Commissioner Nora Brownell, Commissioner Joseph Kelliher, Commissioner Suedeen Kelly.

II. Broad Overview of Current Energy Infrastructure in the Northeast

9:10 a.m. to 9:20 a.m.

• Jeff Wright, Office of Energy Projects, FERC.

III. Forecasting Future Energy Infrastructure Needs in the Northeast

9:20 a.m. to 9:40 a.m.

• Edward Krapels, Ph.D., Director, Energy Development Services, Energy Security Analysis, Inc.

IV. New York City

9:45 a.m. to 11:45 a.m.

—FERC Staff Introduction and Overview of the Panel Issues.

As demand grows, there will be a need for new capacity—gas and electric—later in this decade. This panel would suggest solutions that allow infrastructure projects to be approved and constructed in a timely fashion before capacity constraints cause loss of service in this high-growth area.

• Gil Quiniones, Chairman, New York City Energy Policy Task Force.

• William Flynn, Chairman, New York Public Service Commission.

• Eugene McGrath, Chief Executive Officer, Consolidated Edison Energy.

• Glenn Kettering, President, NiSource Pipeline Company.

• William Museler, President and Chief Executive Officer, NewYork ISO.

• Steve Zelkowitz, President, Energy Assets and Supplies, KeySpan.

• Charlie Fox, Deputy Chief of Staff, New York Governor George Pataki.

• Steven Greenwald, Managing Director, Global Project Finance, Credit Suisse First Boston.

• Frank Cassidy, President and Chief Executive Officer, PSEG Power LLC.

V. Lunch

11:45 a.m. to 1:15 p.m.

VI. New England

1:15 p.m. to 2:45 p.m.

—FERC Staff Introduction and Overview of the Panel Issues.

There are gas transmission constraints in New England from all geographic directions, effectively isolating the region and calling for more pipeline capacity or reliance on Liquified Natural Gas (LNG) import terminals, which often face local opposition. Further, New England has seen considerable construction of gas-fired electric generation without a corresponding addition of electric transmission capacity to get this energy to markets. This panel would address these mounting infrastructure problems and seek to identify what can be done to coordinate efforts for expeditious consideration and construction of much needed projects.

• Robert Keating, Commissioner, Massachusetts Department of Telecommunications and Energy.

• Beth Nagusky, Director of Energy Independence and Security, Maine Governor's Task Force on LNG.

• Paul Vaitkus, Vice President, NSTAR.

• Gordon van Welie, President and Chief Executive Officer, ISO New England.

• Dennis Welch, Chairman, Northeast Gas Association.

• Richard Grant, President and Chief Executive Officer, Tractebel.

• Linda Kelly, Commissioner, Connecticut Department of Public Utility Control.

• Financial Analyst (invited).

• Steven Corneli, Director of Regulatory Affairs, NRG Energy, Inc.

VII. Regional Supply and Transport Availability

2:50 p.m. to 4:20 p.m.

—FERC Staff Introduction and Overview of the Panel Issues.

Availability of sufficient natural gas supplies to the Northeast appears to be in decline. At the same time, gas transmission capacity from outside the region is also at a premium, especially when considering the amount of gas-fired electric generation. In addition, there are capacity constraints at many points in the region's electric transmission grid (*e.g.*, SW. Connecticut). Attempts to provide supply solutions have often been thwarted. This all translates into a supply crunch. Efforts must be made to get new supplies of energy not only into the region, but between subregions.

• Steve Whitley, Senior Vice President, ISO New England.

• John McCarthy, Business Leader of Commodities, National Energy Board (NEB), Canada.

• Jeff Scott, Chief Operating Officer, NE Transmission, National Grid.

• Rich Bolbrock, Vice President of Power Markets, Long Island Power Authority (LIPA).

• Natural Gas Supply Association (NGSA) Representative (invited).

• Yves Filion, President, Hydro-Québec TransÉnergie.

• Gregory Rizzo, Group Vice President, Duke Energy Gas Transmission.

• Hal Kvisle, President and Chief Executive Officer, TransCanada.

• Dave Boguslawski, Vice President of Transmission, Northeast Utilities.

VIII. Discussion by Conference Registrants

4:25 p.m. to 5 p.m.

Closing Remarks.

[FR Doc. E4–1207 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

May 19, 2004.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 26, 2004, 2 p.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on May 26, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 04–11762 Filed 5–20–04; 10:56 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

May 14, 2004.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an

index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG). This rule provides that pipelines should use PPI–FG minus 1 percent as the oil pricing index factor, 18 CFR 342.3(d)(2). However, on February 24, 2003, the Commission issued its Order on Remand of its Five-Year Review of Oil Pricing Index (Remand Order) in Docket Nos. RM00–11–000 and –001. In the Remand Order the Commission redetermined that the PPI–FG without the minus 1 percent is the appropriate oil pricing index factor for pipelines to use.[1] The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics publishes the final PPG–FG in May of each calendar year. The annual average PPI–FG index figure for 2002 was 138.9. The annual average PPI–FG index figure for 2003 was 143.3.[2]

Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2002 to 2003 is positive .031677.[3] Oil pipelines must multiply their July 1, 2003, through June 30, 2004, index ceiling levels by positive 1.031677 [4] to compute their index ceiling levels for July 1, 2004, through June 30, 2005, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, l995,[5] *see* Explorer Pipeline Company, 71 FERC 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. The full text of this Notice is available on FERC's home page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1200 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 102 FERC ¶ 61,195 at P 1 (2003).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at *http://www.bls.gov/ppi*. To obtain the BLS data, click on ''Get Detailed PPI Statistics,'' and then under the heading ''Most Requested Statistics'' click on ''Commodity Data.'' At the next screen, under the heading ''Producer Price Index—Commodity,'' select the first box, ''Finished goods—WPUSOP3000'', then scroll all the way to the bottom of this screen and click on Retrieve data.

[3] [143.3 – 138.9] / 138.9 = 0.031677

[4] 1 + 0.031677 = 1.031677

[5] For a listing of all prior multipliers issued by the Commission, *see* the Commission's Web site, *http://www.ferc.gov*. The table of multipliers can be found under the headings ''Oil'' and ''Index''.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–6–000]

Notice of Availability of Consequence Assessment Methods for Incidents Involving Releases From Liquefied Natural Gas Carriers

May 14, 2004.

The Federal Energy Regulatory Commission (FERC or Commission) has contracted ABSG Consulting Inc. (ABSG) to research and review methodologies for modeling liquefied natural gas (LNG) spills on water. The final report, entitled *Consequence Assessment Methods for Incidents Involving Releases from Liquefied Natural Gas Carriers,* is available in PDF format from the FERC Web site (*http://www.ferc.gov/industries/gas/indus-act.asp*). Copies of the study have also been mailed to interested parties and government agencies.

The report recommends methods for estimating: Spill rates; pool spread and vapor generation for unconfined LNG spills on water; thermal radiation from pool fires on water; and dispersion of flammable vapors. An overview of data relating to the effects of thermal radiation on people and structures is also included. Example calculations are included for spills from 1- and 5-meter-diameter hull breaches to examine the model sensitivities and to illustrate the various methods. The methods recommended by ABSG will be used by FERC staff to calculate site-specific flammable vapor and thermal radiation hazards in the National Environmental Policy Act review for each import facility application before the Commission.

Any person wishing to comment on the study may do so. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your comments 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 the LNG Engineering Branch, PJ–11.4.
- Reference Docket No. AD04–6–000 and
- Mail your comments so that they will be received in Washington, DC on or before May 28, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. The Commission strongly encourages electronic filing of any comments on this report. See the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Magalie R. Salas,

Secretary.

[FR Doc. E4–1201 Filed 5–21–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0073; FRL–7666–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information (Renewal), EPA ICR Number 1427.07, OMB Control Number 2040–0110

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 5/31/2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of

information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 23, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0073, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Environmental Protection Agency, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: 202–564–6431; e-mail address: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 9, 2003 (68 FR 68618), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0073, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information (Renewal).

Abstract: This ICR updates the burden and costs associated with the data requirements necessary for a permitting authority to determine whether an existing NPDES or sewage sludge permittee is in compliance with the conditions of its permit for the discharge of pollutants to waters of the United States or for the use or disposal of sewage sludge. Most compliance assessment data is generated by permittees and submitted to the appropriate permitting authority. The permitting authority uses the information to determine compliance with permit conditions and if any noncompliance poses a threat to human health or the environment. If noncompliance is detected, the permitting authority will take the appropriate enforcement action based on the frequency and the degree of seriousness of the violation.

This ICR calculates the burden associated with compliance assessment information (other than discharge monitoring reports) required by parts 122 and 501 and certification or alternative requirements contained in the effluent limitations guidelines and standards regulations for various point source categories. This ICR adds burden and costs previously collected under OMB ICR No. 2040–0230, Best Management Practices, Alternatives, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category (40 CFR part 435). These requirements include routine submittals, such as annual certifications and reports submitted when a compliance schedule milestone is reached; non-routine submittals, such as an unanticipated bypass; and certifications for exemptions of monitoring requirements for certain industrial categories.

Where information submitted contains trade secrets or similar confidential business information, the respondent has the authority to request that this information be treated as confidential business information. All data so designated will be handled pursuant to 40 CFR part 2. Pursuant to section 308(b) of the Clean Water Act, effluent data may not be treated as confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments, tribes, private industry, and public and private entities covered under an NPDES discharge permit (or required to oversee NPDES permit implementation).

Estimated Number of Respondents: 416,964.

Frequency of Response: Varies.

Estimated Total Annual Hour Burden: 1,809,580.

Estimated Total Annual Cost: $69,446,000, includes $0 annualized capital, $0 annual O&M and $69,446,000 annual labor costs.

Changes in the Estimates: There is an increase of 434,168 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in burden is due

to the incorporation of ICR 2040–0230 into ICR 2040–0110, and is the result of an increase in the universe of permittees covered by storm water general permits and their applicable burden for recordkeeping and reporting compliance activities. Other aspects of this ICR are essentially unchanged (or changed minimally) from the previous ICR.

Dated: May 12, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–11670 Filed 5–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 10, 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 July 23, 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: 3060–0206.

Title: Part 21, Multipoint Distribution Service Stations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15,858.

Estimated Time per Response: .083—6 hours.

Frequency of Response: On occasion and annual reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 10,221 hours.

Total Annual Cost: $1,244,300.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The information requested in part 21 is used by the Commission staff to fulfill its obligations as set forth in sections 308 and 309 of the Communications Act of 1934, as amended. The information is used to determine the technical, legal and other qualifications of applicants to operate a station in MDS services. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity, as required by section 309 of the Communications Act. The FCC staff uses the information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by section 310 of the Act. The increase in public costs is due to an estimated increase in the various requirements of part 21.

OMB Control Number: 3060–0360.

Title: Section 80.409(c), Public Coast Station Logs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 316.

Estimated Time per Response: 95 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 30,020 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The recordkeeping requirement contained in 47 CFR 80.409(c) is necessary to document the operation and public correspondence service of public coast radiotelegraph, public coast radiotelephone stations, and Alaska-public fixed stations, including the logging of distress and safety calls where applicable. A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. The Commission uses this information to ensure compliance with applicable rules and to assist in accident investigations.

OMB Control Number: 3060–0364.

Title: Section 80.409(d) and (e), Ship Radiotelegraph Logs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 10,950.

Estimated Time per Response: 47.3 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 517,935 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The recordkeeping requirement in 47 CFR 80.409 (d) and (e) is necessary to document that compulsory radio equipped vessels and high seas vessels maintain listening watches and logs as required by statutes and treaties (including treaty requirements contained in Appendix 11 of the International Radio Regulations, Chapter IV, Regulation 19 of the International Convention for the Safety of Life at Sea, The Bridge-to-Bridge Radiotelephone Act, the Great Lakes Agreement, and the Communications Act). A retention period of more than one year is required when a log involves communications relating to a disaster, an investigation, any claim, or complaint. The FCC uses this information during inspections and investigations to insure compliance with applicable rules and treaties and to assist in vessel distress and disaster investigations. Foreign governments may use this information for similar purposes when a vessel is operating in their territorial waters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–11658 Filed 5–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 10, 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 July 23, 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: 3060–0228.

Title: Section 80.59, Compulsory Ship Inspections.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, non-profit institutions, and State, local or tribal government.

Number of Respondents: 200.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 400 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The requirement contained in this rule section is necessary to implement the provisions of section 362(b) of the Communications Act of 1934, as amended, which permits the Commission to waive the required annual inspection of certain oceangoing ships for up to 30 days beyond the expiration date of a vessel's radio safety certificate, upon a finding that the public interest would be served. The information is used by the Engineer in Charge of FCC Field Offices to determine the eligibility of a vessel for a waiver of the required annual radio station inspection.

OMB Control Number: 3060–0265.

Title: Section 80.868, Card of Instructions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, non-profit institutions, and State, local, or tribal government.

Number of Respondents: 3,000.

Estimated Time per Response: .1 hour.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 300 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The recordkeeping requirement contained in this rule section is necessary to insure that radiotelephone distress procedures are readily available to the radio operator on board certain vessels (300–1600 gross tons) required by the Communications Act of 1934, as amended, or the International Convention for Safety of Life at Sea to be equipped with a radiotelephone station. The information is used by a vessel radio operator during an emergency situation, and is designed to assist the radio operator to utilize proper distress procedures during a time when he or she may be subject to considerable stress or confusion.

OMB Control Number: 3060–0657.

Title: Section 21.956, Filing of Long-Form Applications or Statements of Intention.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2.

Estimated Time per Response: 4 hours (1 hour respondent, 1 hour attorney, 2 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2 hours.

Total Annual Cost: $1,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Where the Basic Trading Area (BTA) is so heavily encumbered that the winning bidder is unable to file a long-form application for a station within the BTA while protecting incumbents from harmful interference, the winning bidder must file a statement of intention of use of the BTA in accordance with section 21.956. This statement of intention must identify all incumbents and describe in detail its plan for obtaining the authorized/proposed MDS stations within the BTA. This statement must also include the exhibits detailed in 21.956(b). The long-form application (FCC 304) has separate OMB approval under control number 3060–0654. The data is used by FCC staff to determine whether to grant a BTA authorization.

OMB Control Number: 3060–0660.

Title: Section 21.937, Negotiated Interference Protection.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 75.

Estimated Time per Response: 30 hours (6 hours respondent, 8 hours contract attorney, 16 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 450 hours.

Total Annual Cost: $300,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Under section 21.937, the level of acceptable electromagnetic interference that occurs at or within the boundaries of an adjacent Basic Trading Area (BTA), partitioned service area or an incumbent MDS station's protected service area, can be negotiated and established with the written consent of the affected licensee. Thus, section 21.937 permits negotiated interference agreements among these parties. These written agreements must be submitted to the Commission within thirty days of ratification. (These agreements are often included with the submission of the FCC 304 attached as Exhibits.) These agreements allow the parties to establish acceptable levels of interference based

on the design of their stations and service needs. These agreements are the most effective means of regulating interference and they provide flexibility in designing MDS systems.

OMB Control Number: 3060–0662.

Title: Section 21.930, Five Year Build-Out Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 450.

Estimated Time per Response: 4 hours (1 hour respondent, 3 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 450 hours.

Total Annual Cost: $202,500.

Privacy Act Impact Assessment: N/A.

Needs and Uses: A BTA authorization holder has a five-year build-out period, beginning on the date of the grant of the BTA authorization and terminating on the 5th year anniversary of the grant of the authorization, within which it may develop and expand MDS station operations within its service area. Section 21.930(c) requires the BTA holder to file with the Commission a demonstration that the holder has met construction requirements. This demonstration must be filed sixty days prior to the end of the five year build-out period. On June 14, 2001, the Commission's Mass Media Bureau (now the Media Bureau) adopted a Memorandum Opinion and Order in MM Docket No. 01–109 which extended the five year build out requirement set forth in section 21.930 by two years. The certification of completion of construction (FCC 304-A) required by section 21.930(a)(3) has separate OMB approval under control number 3060-0664.) The data is used by FCC staff to determine if the BTA holder has met its construction requirements and to ensure that service is promptly delivered to the public. The Commission will issue a declaration that the holder has met the construction requirements.

OMB Control Number: 3060–0984.

Title: Sections 90.35(b)(2), Industrial/Business Pool and 90.175(b)(1), Frequency Coordination Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and State, local, or tribal government.

Number of Respondents: 3,800.

Estimated Time per Response: 1 hour.

Frequency of Response: One time reporting requirement, and third party disclosure requirement.

Total Annual Burden: 3,800 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The rules require applicants proposing to operate a land mobile radio station that have service contours that overlap and existing land mobile station to obtain written concurrence of the frequency coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–11659 Filed 5–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of an Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the renewal, without change, of an information collection titled ''Procedures for Monitoring Bank Secrecy Act Compliance.''

DATES: Comments must be submitted on or before July 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to Thomas Nixon, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Procedures for Monitoring Bank Secrecy Act Compliance.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Thomas Nixon, (202) 898–8766, or at the address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064–0087.

Frequency of Response: On occasion.

Affected Public: State chartered non-member banks.

Estimated Annual Number of Respondents: 5,300.

Estimated Time per Response: One-half hour.

Estimated Total Annual Burden: 2,650 hours.

General Description of Collection: The FDIC's 12 CFR part 326, subpart B, requires all insured nonmember banks to establish and maintain procedures designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and the implementing regulations promulgated by the Department of the Treasury at 31 CFR part 103. This collection is separate from the customer identification requirements required by the Bank Secrecy Act for which the Department of Treasury obtained OMB PRA approval under control number 1506–0026.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of May, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–11619 Filed 5–21–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 7, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Margaret J. Platter, Shawnee Mission, Kansas; to acquire control of SCC Bancshares, Inc., Fairway, Kansas, and thereby indirectly acquire voting shares of Saint Clair County State Bank, Osceola, Missouri.

Board of Governors of the Federal Reserve System, May 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11609 Filed 5–21–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, and RBSG International Holdings Ltd., all of Edinburgh, Scotland and Citizens Financial Group, Inc., Providence, Rhode Island; to acquire and merge with Charter One Financial, Inc. (Charter One Financial) and thereby indirectly acquire Charter One Bank, National Association, both of Cleveland, Ohio.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and First California Southern Bancorp, Escondido, California, to acquire 51 percent of the voting shares of Point Loma Community Bank (in organization), San Diego, California.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Commonwealth Bancshares, Inc., Louisville, Kentucky, to retain 100 percent of First Security Trust Bank, FSB, Florence, Kentucky, which will be renamed First Security Trust Bank, Inc., Florence, Kentucky, upon conversion to a state chartered bank.

Board of Governors of the Federal Reserve System, May 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11610 Filed 5–21–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Bancshares of Florida, Inc., Naples, Florida (formerly Citizens Bancshares of Southwest Florida), to acquire Horizon Financial Corp., and its subsidiary, Horizon Bank, FSB, both of Pembroke Pines, Florida, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–11608 Filed 5–21–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Docket No. OP–1195

Request for Information for Study on Prescreened Solicitations or Firm Offers of Credit or Insurance

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Study and Request for Information.

SUMMARY: The Board is conducting a study concerning prescreened solicitations, pursuant to section 213(e) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which generally amends the Fair Credit Reporting Act (FCRA). The Board is requesting public comment on a number of issues to assist in preparation of the study. Under the FCRA, creditors and insurers in specific circumstances may use certain consumer reports as the basis for sending unsolicited offers of credit or insurance to consumers who meet certain criteria for credit worthiness or insurability (so–called ''prescreened solicitations''). The FCRA provides a mechanism by which consumers can elect not to receive these prescreened solicitations, by directing consumer reporting agencies to exclude the consumer's name and address from lists provided by these agencies to creditors or insurers for use in sending prescreened solicitations. Section 213(e) of the FACT Act requires the Board to conduct a study of the ability of consumers to avoid receiving these prescreened solicitations (including using the mechanism described above), and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers.

DATES: Comments must be received by July 23, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP–1195, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy, Senior Attorney, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA) to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the ''Financial Literacy and Education Improvement Act'') creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The FCRA currently provides that creditors and insurers in specific circumstances may use certain consumer reports as the basis for sending unsolicited firm offers of credit or insurance to consumers (so–called ''prescreened solicitations''). The FCRA provides a mechanism by which consumers can elect not to receive these prescreened solicitations, by directing consumer reporting agencies (CRAs) to exclude the consumer's name and address from lists provided by CRAs to creditors or insurers for use in sending these prescreened solicitations.

Section 213(e) of the FACT Act requires the Board to conduct a study of the ability of consumers to avoid receiving prescreened solicitations, and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers. The Board must submit a report summarizing the results of the study no later than December 4, 2004, which is 12 months after the date of enactment of the Act. The report must contain recommendations for legislative or administrative actions as the Board may determine to be appropriate. In addition, the report must address:

- The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive prescreened solicitations.
- The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving prescreened solicitations.
- The benefits provided to consumers as a result of receiving prescreened solicitations.
- Whether consumers incur significant costs or are otherwise adversely affected by the receipt of prescreened solicitations.
- Whether further restricting the ability of lenders and insurers to provide prescreened solicitations would affect (1) the cost consumers pay to obtain credit or insurance; (2) the availability of credit or insurance; (3) consumers' knowledge about new or alternative products and services; (4) the ability of lenders or insurers to compete with one another; and (5) the ability to offer credit or insurance products to consumers who have been traditionally underserved.

II. FCRA Statutory Provisions on Prescreened Solicitations

Current Provisions

The FCRA establishes requirements for CRAs when furnishing consumer reports for use in connection with prescreened solicitations. A CRA may only furnish a person with consumer reports for such prescreening purposes if: (1) the consumer authorizes the CRA to provide such report to such person; or (2) the transaction consists of a ''firm offer of credit or insurance,'' as defined in section 603(l) of the FCRA; the CRA has established the required procedures to permit consumers to elect to be excluded from prescreened lists; and no such election is in effect as to the consumer. 15 U.S.C. 1681b(c)(1). A

''firm offer of credit or insurance'' is any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned in certain circumstances outlined in section 603(l) of the FCRA. 15 U.S.C. 1681a(l).

A person receiving a prescreened list from a CRA may, as to each consumer on the list, receive only the following information: (1) the name and address of the consumer; (2) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer (such as a partial social security number); and (3) other information about the consumer that does not identify the relationship or experience of the consumer with a particular creditor or other entity. 15 U.S.C. 1681b(c)(2).

As indicated above, a CRA must establish procedures that allow a consumer to notify the agency that the consumer elects to be excluded from prescreened lists furnished by the agency. A consumer may notify the agency through a notification system maintained by the agency (which must include a toll–free telephone number) or by submitting a signed ''notice of election form'' issued by the agency. 15 U.S.C. 1681b(e)(2), (5). Currently under the FCRA, requests made through the notification system maintained by the agency expire two years following notification, unless the consumer revokes the election. 15 U.S.C. 1681b(e)(4). Requests made through a signed notice of election form never expire, although they may be revoked by the consumer. 15 U.S.C. 1681b(e)(4).[1]

Currently under the FCRA, any person who uses a consumer report on any consumer in connection with a prescreened solicitation must provide with each written solicitation to the consumer, a clear and conspicuous statement that: (1) information contained in a consumer's consumer report was used in connection with the offer; (2) the consumer received the offer because he or she satisfied the criteria for creditworthiness or insurability used to screen for the offer; (3) if applicable, the credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on creditworthiness or insurability, or the consumer does not furnish required collateral; and (4) the consumer has the right to prohibit use of information in the consumer's file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The address and toll–free telephone number of the appropriate notification system also must be provided. 15 U.S.C. 1681m(d).

FACT Act Amendments

Section 213 of the FACT Act amends the FCRA with respect to prescreened solicitations in two ways. First, section 213(a) amends the FCRA to require that the notice provided by creditors or insurers with each written unsolicited prescreened offer, as discussed above, be presented in such format and in such type size and manner as to be simple and easy to understand, as established by regulations issued by the Federal Trade Commission, in consultation with the federal banking agencies and the National Credit Union Administration. These regulations must be issued in final form not later than 12 months after the date of enactment of the FACT Act, or December 4, 2004. Second, section 213(c) of the FACT Act extends from two years to five years the effective period of a consumer's election not to receive prescreened solicitations through a telephone notification system. This provision will become effective December 1, 2004. (69 FR 6526, Feb. 11, 2004).

III. Request for Specific Information

As described above, section 213(e) of the FACT Act requires the Board to conduct a study, and report its finding to Congress, of the ability of consumers to avoid receiving prescreened solicitations, and the potential impact that any further restrictions on providing consumers with such prescreened solicitations would have on consumers. In conducting the study, the Board is requesting public comment on the following issues:

- To what extent are insurance providers providing prescreened solicitations to consumers?
- What statutory or voluntary mechanisms are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive prescreened solicitations?
- To what extent are consumers currently utilizing existing statutory and voluntary mechanisms to avoid receiving prescreened solicitations? For example, what percent of consumers (who have files at consumer reporting agencies) opt out of receiving prescreened solicitations for credit or for insurance?
- What are the benefits to consumers in receiving prescreened solicitations? Please be specific.
- What significant costs or other adverse effects, if any, do consumers incur as a result of receiving prescreened solicitations? Please be specific. For example, to what extent, if any, do prescreened solicitations contribute to identity theft or other fraud? What percent of fraud–related losses are due to identity theft emanating from prescreened solicitations?
- What additional restrictions, if any, should be imposed on consumer reporting agencies, lenders, or insurers to restrict the ability of lenders and insurers to provide prescreened solicitations to consumers? How would these additional restrictions benefit consumers? How would these additional restrictions affect the cost consumers pay to obtain credit or insurance, the availability of credit or insurance, consumers' knowledge about new or alternative products and services, the ability of lenders or insurers to compete with one another, and the ability of creditors or insurers to offer credit or insurance products to consumers who have been traditionally underserved? Please be specific.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 18, 2004.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 04–11607 Filed 5–21–04; 8:45 am]

BILLING CODE 6210–01–S

[1] When a consumer contacts an agency through the notification system, the agency must inform the consumer that the election is effective only for the 2 year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency. The agency also must provide to the consumer a notice of election form, upon request of the consumer. 15 U.S.C. 1681b(e)(3).

FEDERAL TRADE COMMISSION

Public Workshop: Radio Frequency Identification: Applications and Implications for Consumers

AGENCY: Federal Trade Commission (FTC).

ACTION: Extension of public comment period until July 9, 2004.

SUMMARY: The FTC announces that the time period during which persons may submit written comments on the issues to be addressed by the public workshop has been extended.

DATES: Comments must be received by July 9, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''RFID Workshop—Comment, P049106,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and the original and two copies should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex G), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent, as prescribed in the Supplementary Information section, to the following email box: *rfidworkshop@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Julie K. Brof, Attorney, (206) 220–4475, Northwest Region, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, WA 98174. To read our policy on how we handle the information you submit, please visit *http://www.ftc.gov/ftc/privacy.htm*.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

On June 21, 2004, the FTC is planning to host a public workshop, ''Radio Frequency Identification: Applications and Implications for Consumers,'' that will explore the uses, efficiencies, and implications for consumers associated with radio frequency identification (RFID) technology. The workshop will address both current and anticipated uses of RFID tags and their impact on the marketplace. Questions to be addressed at the workshop are set forth in the Commission's Notice Announcing Public Workshop and Requesting Public Comment, published in the **Federal Register** on April 15, 2004.

Form and Availability of Comments

The time period during which public comments may be submitted has been extended. Interested parties may submit written comments on the questions and issues addressed by the workshop until July 9, 2004. Especially useful are any studies, surveys, research, and empirical data. Comments should refer to ''RFID Workshop—Comment, P049106,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and the original and two copies should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex G), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: *rfidworkshop@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Donald S. Clark,

Secretary.

[FR Doc. 04–11631 Filed 5–21–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/26/2004			
20040744	LGB Keystone LLC	Keystone Foods Holding Company, Inc ..	Executive Holdings LLC. Keystone Foods LLC.
20040762	Calpine Power Income Fund	Basic American, Inc	Basic American, Inc.
20040763	Nautic Partners V, L.P	Flavor & Fragrance Group Holdings, Inc	Flavor & Fragrance Group Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/28/2004			
20040747	Bank One Corporation	Marc Ladreit de Lacharriere	LBC S.A.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/29/2004			
20040509	Connors Bros. Income Fund	Centre Capital Investors III, L.P	Bumble Bee LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—04/30/2004			
20040759	Thomas Cressey Fund VII, L.P	Web Clients, Inc	Web Clients, Inc.
20040765	JP Morgan Chase & Co	Nathan Kirsh	Jetro JMDH Holdings, Inc.
20040767	BSW Holdings, Inc	Electronic Data Systems Corporation	UGS PLM Solutions Inc.
20040770	Roger Barnett	Yamanouchi Pharmaceutical Co., Ltd	INOBYS LLC. Shaklee Corporation.
20040771	TelCove, Inc	Exelon Corporation	PECO Telcove.
20040773	Hughes Supply, Inc	Karl B. McMillen, Jr	Todd Pipe & Supply—Hawthorne, Inc.
20040779	Bain Capital Fund VI, L.P	Domino's Pizza, Inc	Domino's Pizza, Inc.
20040780	Bain Capital VI Coinvestment Fund, L.P	Domino's Pizza, Inc	Domino's Pizza, Inc.
20040788	Arsenal Capital Partners Qualified Purchaser Fund L.P.	Millennium Chemicals, Inc	Millennium Specialty Chemicals Inc.
20040792	SR. Teleperformance	Newco	Newco.
TRANSACTIONS GRANTED EARLY TERMINATION—04/30/2004			
20040411	L'Air Liquide SA	Messer Griesheim Group GmbH & Co. KGaA.	Messer Griesheim GmbH.
TRANSACTIONS GRANTED EARLY TERMINATION—05/04/2004			
20040787	William Blair Capital Partners VII QP, L.P	Lauri E. Union Grantor Retained Trust	Union Corrugating Company.
TRANSACTIONS GRANTED EARLY TERMINATION—05/05/2004			
20040728	Kerry Group plc	J. Manheimer Inc	J. Manheimer Inc.
20040740	Amgen Inc	Tularik Inc	Tularik Inc.
20040784	Occum Acquisition Corp	Safeco Corporation	American States Life Insurance Company. Employee Benefits Consultants, Inc. First Safeco National Life Insurance Company of New York. Safeco Administrative Services, Inc. Safeco Asset Management Company. Safeco Assigned Benefits Service Company. Safeco Life Insurance Company. Safeco National Life Insurance Company. Safeco Securities, Inc. Safeco Services Corporation. Wisconsin Pension and Group Services, Inc.
20040797	Pitney Bowes Inc	Group 1 Software, Inc	Group 1 Software, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/06/2004			
20040713	Informa Group plc	Taylor & Francis Group plc	Taylor & Francis Group plc.
20040758	Headquarters Incorporated	Eldorado Stone Holdings Co, LP	Eldorado Stone Acquisition Co., LLC
20040834	Mr. Kjell Inge Rokke	Kvaerner ASA	Kvaerner ASA.
TRANSACTIONS GRANTED EARLY TERMINATION—05/07/2004			
20040764	Calpine Corporation	General Electric Company	Cogen Holdings I LLC.
20040768	Ainsworth Lumber Co. Ltd	Boise Cascade Corporation	Voyageur Panel Limited.
20040769	Bristol-Myers Squibb Company	Mr. Pierre Fabre	Pierre Fabre Medicament S.A.
20040783	Genstar Capital Partners III, L.P	Gregory Block	American Pacific Enterprises, LLC.
20040789	United Technologies Corporation	Automated Logic Corporation	Automated Logic Corporation.
20040794	Welsh, Carson, Anderson & Stowe IX, L.P. (WCAS IX).	U.S. Oncology Holdings, Inc	U.S. Oncology Holdings, Inc.
20040795	Welsh, Carson, Anderson & Stowe IX, L.P.	U.S. Oncology, Inc	U.S. Oncology, Inc.
20040800	International Paper Company	Dennis Mehiel	Box USA Holdings, Inc.
20040803	JAKKS Pacific, Inc	Play Along (Hong Kong) Ltd	Play Along (Hong Kong) Ltd.
20040806	Kerr-McGee Corporation	Westport Resources Corporation	Westport Resources Corporation
20040808	Sumner M. Redstone	Midway Games, Inc	Midway Games, Inc.
20040811	Bruckmann, Rosser, Sherrill & Co. II, L.P	Prudential plc	LD Holdings, Inc.

Trans No.	Acquiring	Acquired	Entities
20040812	Ormat Industries Ltd	Constellation Energy Group Inc	CE Puna II, Inc. CE Puna I, Inc. CE Puna Limited Partnership. Puna Geothermal Venture.
20040814	Dr. David V. Goeddel	Amgen Inc	Amgen Inc.
20040819	SunGard Data Systems Inc	Joseph A. Savage, Jr	Open Software Solutions.
20040820	SunGard Data Systems Inc	Hua "Frank" Luo	Open Software Solutions, Inc.
20040821	Citigroup Inc	Sunoco, Inc	Sunoco, Inc. (R&M).
20040823	Joseph M. & Marie H. Field	Michael S. Maurer	MyStar Communications Corporation.
20040824	Joseph M. & Marie H. Field	Robert E. Schloss	MyStar Communications Corporation.
20040835	CompuCredit Corporation	First American Management, Inc	FACA of Arkansas, LLC. First American Cash Advance of Alabama, LLC. First American Cash Advance of Colorado, LLC. First American Cash Advance of Florida, LLC. First American Cash Advance of Oklahoma, LLC. First American Cash Advance of South Carolina, LLC. First American Cash Advance of Tennessee, LLC. First American Financial Services, LLC. First American Franchising, LLC. First American Holding, LLC. Foresight Management Company, LLC. Union Management Company, LLC. United Services, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/11/2004			
20040782	ABRY Partners IV, L.P	Providence Equity Partners III L.P	Language Line Holdings, Inc.
20040807	Albemarle Corporation	Akzo Nobel NV	Akzo Nobel Catalysts LLC.
20040815	Teledyne Technologies Incorporated	Isco, Inc	Isco, Inc.
20040816	Stephen L. LaFrance and Linda LaFrance.	May's Drug Stores, Inc	May's Drug Stores, Inc.
20040817	Hub International Limited	Safeco Corporation	Talbot Financial Corporation.
20040822	The Lubrizol Corporation	Noveon International, Inc.	Noveon International, Inc.
20040831	Charterhouse Equity Partners IV, L.P	Washington & Congress Capital Partners, L.P.	LogistiCare, Inc.
20040833	Fair Isaac Corporation	London Bridge Software Holdings plc	London Bridge Software Holdings plc.
20040837	MacDonald, Dettwiler and Associates Ltd	Marshall & Swift Holdings, LLC	Marshall & Swift/Boeckh Company (Canada) Marshall & Swift, L.P.
20040841	TA IX L.P	CGW Southeast Partners III, L.P	Youth & Family Centered Services, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/12/2004			
20040735	JDS Uniphase Corp	E20 Communications, Inc	E20 Communications, Inc.
20040785	Summit Venture VI–B, L.P	GCA Holdings, Inc	GCA Holdings, Inc.
20040786	Summit Ventures VI–A, L.P	GCA Holdings, Inc	GCA Holdings, Inc.
20040793	M&C International	GCA Holdings, Inc	GCA Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/14/2004			
20040804	Smiths Group plc	The Veritas Capital Fund LP	Trak Holding Corp.
20040839	Molina Healthcare, Inc	Gerald W. Landgraf	Health Care Horizons, Inc.
20040842	The Home Depot, Inc	Green Equity Investors III, L.P	White Cap Industries, Inc.
20040844	Jarden Corporation	Bicycle Holding, Inc	Bicycle Holding, Inc.
20040846	CCG Investment Fund, L.P	LHP Holding Corp	LHP Holding Corp.
20040847	LHP Holding Corp	Leiner Health Products, Inc	Leiner Health Products, Inc.
20040853	Cortec Group Fund III, L.P	Linsalata Capital Partners Fund III, L.P ..	Fasteners Holding Company.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, contact Representative or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–11630 Filed 5–21–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. 2004S–0233]

Solicitation of Comments on Stimulating Innovation in Medical Technologies

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is seeking public comment on how HHS and its agencies can work together to facilitate the development and approval of new medical technologies.

DATES: Submit written or electronic comments by August 23, 2004.

ADDRESSES: Submit written comments concerning this document to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

For general questions about this document: Lisa Rovin, Office of the Commissioner (HFP–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1443.

For information about the seven specific questions listed in the **SUPPLEMENTARY INFORMATION** *section of this document*: Tom Kuchenberg, Office of the Secretary, Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, 202–205–8644.

SUPPLEMENTARY INFORMATION:

I. Background

HHS is seeking comment on how to stimulate innovation in medical technologies, such as drug and biological products and medical devices. We are interested in hearing about ways HHS and its agencies (e.g., National Institutes of Health (NIH), Food and Drug Administration (FDA), Centers for Medicare and Medicaid Services (CMS), and Centers for Disease Control and Prevention (CDC), can work together to facilitate the development and approval of new medical technologies.

Recent advances in basic sciences, such as genomics, proteomics, and bioinformatics, have created the potential for the development of innovative medical technologies that can provide new hope and better quality of life for many Americans. At the same time, more funds are being invested in biomedical science in America than ever before. NIH, which is just completing a 5-year doubling of its budget to $27 billion (Ref. 1), has launched its Roadmap initiative (Ref. 2). The Roadmap initiative aims to transform the nation's medical research enterprise and help speed the movement of research discoveries from the laboratory to the patient.

During the past decade, pharmaceutical firms have increased their research and development investments to more than $30 billion (Ref. 3). Considering the many other organizations involved in medical research in this country (e.g., Department of Defense, Department of Energy, Department of Veteran's Affairs, academic organizations, and foundations), the total amount spent each year in the development of medical technology in the United States could conceivably approach $100 billion.

With an aging population it is worth noting that in 2002 Medicare expenditures for new drugs and devices were approximately $4 to 6 billion. To help speed access to these new technologies, CMS is working on novel ways to better coordinate coverage, payment, and coding for a more timely reimbursement process.

Nonetheless, there is concern that new discoveries in basic sciences are not rapidly translating into new medical products for patients. In a recent report announcing its Critical Path initiative[1] (Ref. 4), FDA noted that the numbers of new drug and biologic applications being submitted to FDA are decreasing despite the dramatic increase in research and development spending over the past decade.[2] Current estimates suggest that it takes 10 to 15 years and $800 million in investment for a new drug to make it from the laboratory bench to a patient's bedside (Ref. 5). On April 22, 2004, FDA published a notice in the **Federal Register** (69 FR 21839) asking for input on the scientific and technical hurdles that cause delays and other problems during the product development process. That notice focused exclusively on FDA. In this notice we are requesting that all constituents comment on what HHS agencies can do together to stimulate innovation in medical technologies.

HHS, through its operating agencies (e.g., NIH, FDA, CMS, and CDC), is an important part of the nation's medical technology infrastructure. To help HHS understand what it can do to facilitate the development of innovative medical technologies, we are asking the following questions:

1. What strategies and approaches could HHS implement to accelerate the development and application of new medical technologies?

2. How can HHS help its agencies (e.g., NIH (and its grantees), FDA, CDC, and CMS) to work together more effectively to eliminate obstacles to development of medical technologies?

3. How can the HHS scientific and regulatory agencies work more effectively with CMS to eliminate obstacles to development?

4. What forums should HHS use to survey constituents about obstacles to innovation (e.g., public meetings, contract research, focus groups)?

5. How can the portability of information between HHS agencies be optimized?

6. Which HHS policies and programs effectively spur innovation? Which policies and programs at NIH (and its grantees), CMS, FDA, and CDC should be expanded to help spur innovation? Do any policies and programs pose obstacles to innovation?

7. What role should be played by nongovernmental partners in assisting the Federal Government in this process?

II. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

[1] The report lays out FDA plans to help make the critical path more predictable and efficient. If products that are likely to fail can be identified earlier in the development process, more research and development resources can be devoted to developing those products that are likely to succeed.

[2] Only one in five products that reach the clinical testing stage ever makes it to marketing.

III. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Elias A. Zerhouni, ''Statement of the Director to the House Subcommittee on Labor-HHS-Education Appropriations on the FY 2004 President's Budget Request,'' April 2, 2003.

2. National Institutes of Health, Roadmap Overview, September 2003.

3. Tufts Center for the Study of Drug Development, U.S. Pharmaceutical Industry Inflation-Adjusted R&R Expenditures and NCE Approvals, 1963–2002.

4. FDA, ''Innovation or Stagnation, Challenge and Opportunity on the Critical Path to New Medical Products,'' March 2004.

5. Tufts Center for the Study of Drug Development, ''Backgrounder: How New Drugs Move Through the Development and Approval Process,'' November 2001.

Dated: May 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–11612 Filed 5–21–04; 1:17 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04195]

Strengthening the Masters-Level Public Health Training Program in Zimbabwe; 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 strengthen masters-level graduate training programs in public health to more comprehensively address the HIV/AIDS epidemic in Zimbabwe. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the University of Zimbabwe (UZ), with the assistance targeted to the Department of Community Medicine (DCM). No other applications are solicited.

The UZ/DCM MPH program is an applied epidemiology training program founded through a collaborative effort between the Ministry of Health and Child Welfare (MOHCW) and the UZ/DCM. During the past three years, the MPH Program has trained 37 personnel in its two-year course. It also trained approximately 416 district health team members in health information for district management leading to a Certificate in Health Information for District Management (CHIDM).

The UZ/DCM MPH program is the only MPH program in the country and the only graduate public health program providing core public health trainings. The purpose of this agreement is to build upon the success of the program and allow it to expand without compromising the quality of the training.

Zimbabwe is among the countries in the world most affected by HIV/AIDS: HIV prevalence is estimated to be approximately 25 percent, there has been a ten-fold increase in the number of TB cases, and up to 35 percent of the children may be orphaned by AIDS at the end of this decade. At the same time, the public health response to the epidemic in Zimbabwe is inadequate due, in part, to insufficient manpower in the Zimbabwe public health system and lack of sufficient expertise in HIV/AIDS. This training program will enable Zimbabwe to train and place epidemiologists who are better equipped to address epidemics.

C. Funding

Approximately $173,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before July 15, 2004, and will be made for a 12-month budget period within a project period of up to three 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 program technical assistance, contact: Shannon Hader, M.D., Director, CDC Zimbabwe, 38 Samora Machel Avenue, Harare, Zimbabwe, telephone: +263 4 796040, E-mail: *haders@zimcdc.co.zw.*

For budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2696, E-mail: *zbx6@cdc.gov.*

Dated: May 17, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11634 Filed 5–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04142]

BECAUSE Kids Count! (Building and Enhancing Community Alliances United for Safety and Empowerment); Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement BECAUSE Kids Count! (Building and Enhancing Community Alliances United for Safety and Empowerment) was published in the **Federal Register**, May 10, 2004, Volume 69, Number 90, pages 25899–25903. The notice is amended as follows: Page 25899, second column, change Letter of Intent Deadline to May 28, 2004 and change Application Deadline Date to June 23, 2004. Page 25901, second column, change Letter of Intent (LOI) Deadline to May 28, 2004 and page 25901, first column, Pre-Application Conference Call: change time from 9:30 a.m. Eastern time to 12:30 p.m. Eastern time.

Dated: May 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control And Prevention.

[FR Doc. 04–11636 Filed 5–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04138]

Evaluation of the Use of Rapid HIV Testing in the United States; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement Evaluation of the Use of Rapid HIV testing in the United States was published in the **Federal Register** April 1, 2004, Volume 69, Number 63, pages 17163–17166. The notice is amended as follows: Page

17163, first column, under ''Purpose'' change to, ''The purpose of the program is to evaluate how to rapid tests for HIV are being implemented and used across the United States in clinical practice, and identify potential opportunities to provide guidance to assist providers in making decisions on the appropriate use of these tests.''

Page 17163, second column under ''Purpose'' last paragraph, add ''Thus, rapid tests for HIV may be used in many different types of venues including physician office laboratories, clinics, hospital emergency rooms other departments, public health departments and non-clinical testing sites.''

Page 17163, third column, under ''Activities'' first bullet, change to, ''Provide leadership in developing a program to determine the national scope of rapid HIV test utilization, with a focus on utilization in the private sector, including the number and type of sites where rapid HIV tests are offered, the specific tests used, testing volume, purpose for testing, characteristics of patient populations tested, and other characteristics related to the sites where rapid HIV testing is being implement and used.''

Page 17163, third column, under ''Activities'' second bullet, change to, ''Evaluate how these tests are integrated into the health care delivery system, for example methods used for specimen collection and handling, results reporting, confirmation of preliminary positive rapid test results, and use of results by practitioners.''

Page 17163, third column, under ''Activities'' third bullet, change to, ''Catalog problems that sites have identified and reported using these tests, such as lack of follow-up on preliminary positives, false positive, or negative results, testing delivery issues, costs of testing, and difficulties with provision of training to testing personnel.''

Page 17164, III.1. Eligible Applicants, delete community-based organizations.

Dated: May 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11633 Filed 5–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Testing for Primary HIV Infection in Seronegative Patients

Announcement Type: New.

Funding Opportunity Number: 04119.

Catalog of Federal Domestic Assistance Number: 93.943.

Key Dates:

Letter of Intent Deadline: June 23, 2004.

Application Deadline: July 23, 2004.

Summary: The technology for human immunodeficiency virus (HIV) screening tests has progressively improved over the first generation HIV–1 enzyme-linked immunoassay (EIA) tests licensed in 1985. Newer testing technology can identify infected individuals earlier in the course of their infection. Identifying individuals earlier in the course of infection holds the potential for reducing transmission, increasing diagnosis of infected persons, and improving health outcomes for infected individuals. Because of the high viral load during acute infection, the risk of HIV transmission through sexual and needle contact may be particularly high during this time period.

In both domestic (US) and international settings, methods have been piloted to demonstrate detection of HIV infection early in the course of infection. In these approaches, individuals were tested with standard antibody tests. Individual specimens from patients testing negative on initial screening tests were grouped into pools, which were tested by ribonucleic acid (RNA) amplification. Such pooling strategies have been demonstrated to identify persons with early HIV infection, or primary HIV infection (PHI), before they would have otherwise been identified with early generation, less sensitive EIAs.

Based on experiences reported in the medical literature, RNA screening for PHI appears to be feasible in a setting with moderate HIV prevalence, without anonymous testing, and with sufficient staff to contact those identified with PHI who do not return for their results. However, the utility and costs of screening for acute infection among other populations needs study. Issues include: (1) Whether testing for acute infection can be accomplished in real-time; (2) whether patients return for their test results, particularly those with non-reactive rapid HIV tests; (3) whether patients with PHI who do not return for test results can be contacted for followup; (4) whether identifying PHI increases the yield from partner contact and referral services (PCRS); and (5) whether the utility of the strategy differs in the context of anonymous testing.

Furthermore, pooled RNA testing must be compared not only to insensitive EIAs, but also to other methods that may identify HIV infection earlier than the insensitive EIAs, such as p24 antigen testing (positive approximately 5 days after RNA); third generation EIAs (positive approximately 10 days after RNA); or OraQuick testing (similar to third-generation EIAs). Laboratory results from multiple testing technologies can also be compared to determine potential laboratory criteria for identifying certain specimens which would warrant further testing for PHI (*e.g.*, supplemental testing if a single EIA is positive or if the Western blot is negative or indeterminate, or an EIA is in the ''grey zone'' as defined by signal/cutoff ratios less than 1.0, but greater than a specified threshold). The marginal utility of pooled RNA screening needs to be compared to these other methods of identifying earlier HIV infection.

Identifying persons with acute HIV infection can also serve as the basis for collecting longitudinal follow-up specimens from recently infected individuals, essential for developing, validating, and comparing potential HIV incidence assays.

In this program, specimens from all patients presenting for voluntary HIV testing will be tested with standard antibody tests (EIA or rapid test). Specimens that test antibody-negative on screening tests and those that test antibody-positive on screening tests but negative or indeterminate by confirmatory Western blot or immunofluorescence will be tested with multiple other testing technologies, including pooled nucleic acid testing, p24 antigen testing, a third generation EIA (if not already performed), and (for some specimens) OraQuick and Western blot (if not previously performed). (Please note that patients testing negative with tests performed on finger stick or oral specimens will only be able to participate in this project if venous blood samples are drawn.) Nucleic acid testing and p24 antigen testing must be performed in real-time so that results would be available as soon as usual confirmatory test results (typically two weeks). Demographic data, testing history, and information about self-perceived risk, recent exposures, and PHI symptoms would be collected on all patients who had preliminary evidence

of PHI, but were antibody negative by standard screening. RNA-positive, antibody-negative patients would be followed with antibody tests to confirm seroconversion. All persons with preliminary evidence of PHI would be offered enrollment in a follow-up study to collect additional information by interview and to collect longitudinal (seroconversion and post-seroconversion) specimens in larger quantities.

This activity will be funded in 2 parts. Part 1 applicants will propose collaboration with testing sites to identify and secure appropriate specimens from a variety of setting types with various prevalences within their jurisdiction; they will conduct client follow-up activities and assimilate study data. Part 2 applicants will be laboratories that propose to perform laboratory testing for specimens collected by Part 1 sites and refine pooling strategies for screening antibody negative specimens by nucleic acid testing.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act sections 301 and 317 (42 U.S.C. 241 and 247b), as amended.

Purpose: The purpose of the program is to determine the feasibility, effectiveness, and costs of screening for acute infection among seronegative individuals tested for HIV. This program addresses the ''Healthy People 2010'' focus area of HIV.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV/STD and TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs. In addition, this program addresses the Division of HIV/AIDS Prevention priorities: Develop new methods for diagnosing HIV infection, and institute integrated surveillance with emphasis on incidence, behavioral surveillance, and evaluation.

Research Objectives

1. To compare different tests and testing algorithms that could be used to detect acute infection (nucleic acid testing, p24 antigen testing, third-generation EIA, OraQuick, alterations in current diagnostic algorithm) where possible with regard to feasibility, sensitivity, specificity, predictive value, and cost.

2. To determine optimal settings/venues and/or individuals to be screened with a test sensitive for PHI.

3. To collect a panel of longitudinal specimens from a cohort of recently infected individuals.

4. To obtain preliminary information on alternative pooling strategies for nucleic acid testing to optimize cost and predictive value of test results.

Activities

Awardee activities for this program are as follows:

Part 1:

- Develop a protocol in collaboration with other funded sites (including the laboratory funded through part 2 of this announcement) and the CDC. The protocol must be reviewed by the CDC and local IRBs. (Project timeline and budget must allow for sufficient time—approximately 6 months—for the development of the protocol and determination of human subjects status and consent procedures.)
- Identify approximately 50,000 seronegative and indeterminate specimens through customary HIV testing procedures from a variety of setting types with various prevalence within their jurisdiction. Prepare and ship specimens according to applicable regulations within a mutually agreed upon time period to the laboratory funded through Part 2 of this announcement for additional testing. (Please note that patients testing negative with tests performed on finger stick or oral specimens will only be able to participate in this project if venous blood samples are drawn.)
- Collect and maintain database of information linked to initial and follow-up tests, including data routinely collected by the Counseling and Testing System on characteristics of the patient, the testing site, and the HIV test(s) performed. Obtain additional information from the routine HIV diagnostic tests performed, including EIA or rapid test kit manufacturer, EIA signal to cut-off ratio, and, if performed, Western blot manufacturer and banding patterns; maintain this information in an electronic database.
- Work with the CDC to develop and implement post-test counseling messages that incorporate the findings of additional tests performed for identification of PHI as part of this announcement.
- Contact clients who test positive for PHI and who do not return as scheduled 2 weeks following initial testing. Document time and effort required for follow-up activities.
- To patients who test positive for PHI, offer enrollment in a research study to obtain additional data by interview and to collect longitudinal specimens:
  - Obtain human subjects clearance from CDC and local IRB and consent for participation. (This may require a second protocol.)
  - Conduct interview to collect demographic data, testing history, and information about self-perceived risk, recent exposures, and PHI symptoms.
  - Collect follow-up specimens at 2-week intervals until the initial positive test for PHI can be determined to be a true positive or a false positive test result according to the combination of tests performed at the original testing site and at the funded laboratory. These samples should be tested by the laboratory routinely used by the original testing site and according to routine HIV testing protocols. Specimens should also be prepared and sent to the laboratory funded in Part 2 for further testing for PHI.
  - Obtain a total of 10 longitudinal samples (large volume) on all patients testing positive for PHI at appropriate intervals over a 9–12 month period (as permitted by the project period), with at least 6 of these samples obtained during the first 6 months of follow-up. Utilize DIS services as necessary. Prepare and ship specimens to the funded testing laboratory.
- Participate in periodic conference calls and grantee meetings with other funded sites and the CDC.
- Disseminate findings jointly with CDC and other participating sites.

Part 2:

- Participate with CDC and the health departments funded through Part 1 of this application in the development of testing protocols for the identification of PHI among approximately 100,000 specimens supplied by the Part 1 grantees. Identification of PHI should include pooled, automated HIV nucleic acid, p24 antigen, and 3rd generation EIA testing (if not performed at field site) on all specimens submitted. Other tests, including OraQuick and Western blot testing, should be performed on up to 150 specimens with preliminary evidence of PHI that were not previously tested with these tests in order to evaluate potential laboratory criteria for identification of PHI.
- Secure IRB review and approval by the local IRB. (Project timeline and budget must allow for sufficient time—approximately 6 months—for the development of the protocol and determination of human subjects status.)
- Conduct pooled, automated nucleic acid testing on initial seronegative specimens in real time. All test results must be transmitted to the designated

contact at testing facility within 7 calendar days of receipt of specimens.

• Individually test follow-up specimens of patients who tested positive for PHI at baseline with HIV nucleic acid and p24 antigen tests. Follow-up nucleic acid and p24 antigen testing will be conducted at 2-week intervals until the initial positive test for PHI can be determined to be a true positive or a false positive according to the combination of tests performed at the original testing site and at the funded laboratory.

• Aliquot and store longitudinal specimens from patients who test positive for PHI at baseline (approximately 10 samples per patient collected periodically over a 9–12 month period, see Part I above). Note that no testing will be performed upon longitudinal samples collected after a patient who initially tested positive for PHI has been determined to be infected or not.

• Maintain a database containing all test results and specimen numbers.

• Store frozen samples at −70 °C until the end of the project. Ship all samples to CDC-designated laboratory or permanent storage site.

• In the second year of the project, conduct additional automated, pooled nucleic acid testing (not in real time) to determine alternative pooling strategies to optimize cost and predictive value of pooled, RNA screening.

• Obtain human subjects clearance from local IRB and consent for participation, if required.

• Participate in periodic conference calls and grantee meetings with other funded sites and the CDC.

• Disseminate findings jointly with CDC and other participating sites.

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:

• Assist in the development and review of the required protocols.

• Provide guidance and assistance in the development of forms and data collection instruments as well as data management systems and procedures.

• Work with Part I grantees to develop post-test counseling messages that incorporate the findings of the additional tests performed as part of this announcement for the identification of PHI.

• Facilitate conference calls, grantee meetings, and site visits.

• Assist in the analysis and dissemination of findings.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004, 2005.

Approximate Total Funding: $2,000,000/2 years.

Approximate Number of Awards: 3 awards: Part 1: 2 awards; Part 2: 1 award.

Approximate Average Award: Part 1: $500,000; Part 2: $1,000,000 (This amount is to be divided over the two-year project period, and includes both direct and indirect costs. Applications should include a budget indicating separately how the funds will be used in Year 1 and Year 2. The award need not be equal for the 2 funding years.)

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 2 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 public and private nonprofit organizations and by governments and their agencies, such as:

• Universities.
• Colleges.
• Research institutions.
• Hospitals.
• Community-based organizations.
• Federally recognized Indian tribal governments.
• Indian tribes.
• Indian tribal organizations.
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
• Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

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.

Applicants for Part 1 must demonstrate their ability to provide, in a 12 month period, samples from 50,000 seronegative individuals (the required sample size) tested by serologic methods as part of the CDC-funded Counseling and Testing System in the proposed jurisdiction. In addition, areas must demonstrate that the seropositivity rate of HIV tests in the CDC-funded Counseling and Testing System which will be the source of the specimens is at least 1.5 percent. A sufficiently high level of HIV morbidity is required of the participating sites in order to evaluate the feasibility of this activity at higher morbidity areas and in order to complete this research within the required timeframe.

Applicants for Part 2 must demonstrate experience using automated methods for conducting pooled nucleic acid testing, the ability to return results within 7 calendar days of specimen receipt, and the ability to process 8,000–10,000 specimens per month for the required testing. It is critical that the grantee be able to conduct the pooled nucleic acid testing with automated methods, because nucleic acid testing is vulnerable to contamination and false positive results. Automated methods minimize this problem. Also, because it is expected that results must be available before the client returns to retrieve test results at the testing point, it is required that the grantee be able to accommodate the expected specimen volume and be able to complete test results in a timely manner.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from racial and ethnic groups underrepresented in the field as well as

individuals with disabilities are always encouraged to apply for CDC programs.

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 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

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 Application Submission Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: Three.
- 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:

- Descriptive title of the proposed research.
- Evidence, as listed under ''III.3. Eligibility Information—Other,'' that:
  - For Part 1: The applicant can provide the required sample size of 50,000 seronegative individuals with an HIV seropositivity rate of at least 1.5 percent.
  - For Part 2: The applicant has experience using automated methods for conducting pooled nucleic acid testing, the ability to return results within 7 calendar days of specimen receipt, and the ability to process 8,000 to 10,000 specimens per month.
- Name, address, e-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

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. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. 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.*

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: June 23, 2004.

CDC requests that you send an 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: July 23, 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:

- None

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.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Noreen Qualls, Dr., P.H., Scientific Review Administrator, CDC, National Center for HIV, STD, and TB Prevention, Office of the Associate Director for Science, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, GA 30333, telephone Number: (404) 639–8006, fax: (404) 639–8600, e-mail address: *nqualls@cdc.gov.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management–PA# 04119, 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.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application.

The criteria are as follows:

Part 1:

1. *Capacity (40 points):* Does the applicant have the appropriate facilities and staff to conduct this research? Is adequate and objective information provided to demonstrate the availability of sufficient numbers of clients tested and sufficient seropositivity rates? Is the primary investigator well qualified, by education and experience, to lead the project team, hire and train appropriate staff, and provide scientific oversight? Does the applicant currently demonstrate effort, willingness, and success in contacting HIV-infecting clients tested confidentially who do not return for their test results?

2. *Methods (30 points):* Are the proposed methods feasible? Will they accomplish program goals? Does the applicant address required follow-up activities and methods to complete them in a timely manner? Does the applicant address changes to their HIV testing program required to return all results within 2 weeks, to schedule clients to return and to find clients with evidence of PHI who do not return for scheduled post test counseling? Does the applicant provide a reasonable timeline for the completion of the awardee activities?

3. *Objectives (30 points):* Are the objectives reasonable, time-phased and measurable? Does the applicant provide reasonable methods to evaluate their progress toward the timely accomplishment of objectives?

4. Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

5. Does the applicant adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. *Budget (not scored):* Is the budget reasonable for the proposed activities?

Part 2:

1. *Capacity (50 points):* Does the applicant have the appropriate facilities and staff to conduct this research including equipment required to conduct automated sample processing and testing and the ability to hire and train appropriate staff? Does the applicant demonstrate their ability to process the required number of specimens within the required timeframe? Does the applicant have specific experience conducting the tests required for this activity and have the required knowledge to provide scientific oversight for the conduct of the research?

2. *Methods (25 points):* Are the proposed methods feasible? Will they accomplish program goals? Are the proposed methods scientifically sound and do they demonstrate understanding of the problem to be evaluated? Is a specific proposed pooling strategy articulated and justified? Does the applicant provide a reasonable timeline for the completion of awardee activities?

3. *Objectives (25 points):* Are the objectives reasonable, time-phased and measurable? Does the applicant provide reasonable methods to evaluate their progress toward the timely accomplishment of objectives?

4. *Budget (not scored):* Is the budget reasonable for the proposed activities?

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 HIV/STD/TB Prevention, Division of HIV/AIDS Prevention. 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.

Applicants may apply for Parts 1 or 2 or both. A separate application should be submitted for each Part proposed. Each Part will be evaluated independently by the objective review panel.

In addition, the following factors may affect the funding decision:

Preference will be given to applicants for Part 1 that have larger numbers of clients tested through publicly funded HIV testing programs and higher historical HIV seropositivity rates. For Part 2, laboratories that have demonstrated experience in using automated methods for conducting pooled nucleic acid screening studies will be given preference.

V.3. Anticipated Announcement and Award Dates

September 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–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

- AR–4—HIV/AIDS Confidentiality Provisions
- AR–5—HIV Program Review Panel Requirements
- AR–6—Patient Care
- 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–21—Small, Minority, and Women-Owned Business
- AR–22—Research Integrity
- AR–23—States and Faith-Based Organizations
- AR–24—Health Insurance Portability and Accountability Act Requirements
- 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

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the first 12 month 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 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 Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section—PA #04119, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2700.

For scientific/research issues, contact: Sheryl Lyss, MD, Extramural Project Officer, CDC, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, MS E–46, Atlanta, Georgia 30333, telephone: 404–639–2093, e-mail: *SLyss@cdc.gov.*

For questions about peer review, contact: Noreen Qualls, Dr.P.H., Scientific Review Administrator, CDC, National Center for HIV, STD, and TB Prevention, Office of the Associate Director for Science, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, GA 30333, telephone number: 404–639–8006, fax: 404–639–8600, e-mail address: *nqualls@cdc.gov.*

For financial, grants management, or budget assistance, contact: Brenda D. Hayes, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2741, e-mail: *bkh4@cdc.gov.*

For financial, grants management, or budget assistance in the territories, contact: Vincent Falzone, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2763, e-mail: *vcf6@cdc.gov.*

Dated: May 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11643 Filed 5–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Participatory Research on Community Interventions to Increase the Utilization of Effective Cancer Preventive and Treatment Services, Program Announcement Number 04087

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Participatory Research on Community Interventions to Increase the Utilization of Effective Cancer Preventive and Treatment Services, Program Announcement Number 04087.

Times and Dates: 8:30 a.m.–9 a.m., June 17, 2004 (Open); 9 a.m.–5 p.m., June 17, 2004 (Closed).

Place: Sheraton Midtown Atlanta Hotel at Colony Square, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Participatory Research on Community Interventions to Increase the Utilization of Effective Cancer Preventive and Treatment Services, Program Announcement Number 04087.

Contact Person for More Information: Elizabeth L. Skillen, PhD, Scientific Review Administrator, Public Health Practice Program Office, Centers for Disease Control, 4770 Buford Highway, NE., MS–K38, Atlanta, GA 30341, Telephone 770.488.2592.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 18, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11642 Filed 5–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) Stored Biologic Specimens: Guidelines for Proposals To Use Samples and Proposed Cost Schedule

ACTION: Notice and request for comments.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys, conducted since 1960 by NCHS have provided national estimates of health and nutritional status of the United States civilian non-institutionalized population. To add to the large amount of information collected for the purpose of describing the health of the population in the most recent survey, serum and urine were collected and stored for future research projects.

Specimens are currently available from NHANES III (conducted from 1988-1994) and from NHANES 1999–2002. Participants in the survey that began in 1999 signed a separate consent document agreeing to this storage, and allowing their biologic specimens to be used for approved research projects.

Specimens are stored in two Specimen Banks. Surplus samples that were initially used for laboratory assays included in the surveys, have since been stored at −70 °C and have been through at least two freeze-thaw cycles. They are stored at McKesson BioServices Repository in Rockville, MD. In addition, on average, six vials of sera were also stored in vapor-phase liquid nitrogen at the CDC CASPIR Repository in Lawrenceville, GA. These specimens have not undergone a freeze-thaw cycle. The CASPIR Repository is considered a long-term repository for the NHANES specimens. NCHS is making both of these collections available for research proposals. The research proposals that can use the surplused specimens will receive higher priority. Proposals that request the specimens in CASPIR need to justify the use of the unthawed specimens.

The purpose of this notice is to request comments on this program and the proposed cost schedule. After consideration of comments submitted, CDC will finalize and publish the cost schedule and accept proposals for use of the NHANES stored biologic samples. Please go to *http://www.cdc.gov/nchs/about/major/nhanes/serum1b.htm* for final proposal guidelines.

All interested researchers are encouraged to submit proposals. No funding is provided as part of this solicitation. Samples will not be provided to those projects requiring funding until the project has received funds. Approved projects that do not obtain funding will be canceled. A more complete description of this program follows.

DATES:

- Comment Receipt Date: June 23, 2004.
- Invitation To Submit Proposals: July 23, 2004 or can be received at any time.
- Scientific Review Date: Within two months of proposal submission.
- Institutional Review Date: Within one month of final proposal acceptance.
- Anticipated distribution of samples: one month after IRB approval.

To Send Comments and To Request Information: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, telephone: 301–458–4371, fax: 301–458–4028, e-mail *gmm2@cdc.gov*. Internet: *http://www.cdc.gov/nchs/about/major/nhanes/serum1b.htm*.

SUPPLEMENTARY INFORMATION: The goals of NHANES are: to estimate the number and percent of persons in the U.S. population and designated subgroups with selected diseases and risk factors; to monitor trends in the prevalence, awareness, treatment and control of selected diseases; to monitor trends in risk behaviors and environmental exposures; to analyze risk factors for selected diseases; to study the relationship between diet, nutrition and health; to explore emerging public health issues and new technologies; and, to establish and maintain a national probability sample of baseline information on health and nutrition status.

Specimens are available from NHANES III, which was conducted from 1988–1994 and the current cycle of NHANES where data has been released (1999–2002). In the future, specimens will be available for a two-year cycle of NHANES after the public release of the collected data. The current National Health and Nutrition Examination Survey (NHANES) began in April 1999 and is a continuous yearly study. Data are released on a two-year cycle, and proposed research projects and samples requested must come from this two-year design (*i.e.* request must be for 1999–2000 samples or 2001–2002, etc.). Samples from a single year of the survey will not be provided for research projects, but multiple two-year cycles (*i.e.* four years) may be requested but should be justified. For details of the sampling design see the Analytic Guidelines at: *http://www.cdc.gov/nchs/about/major/nhanes/NHANES99_00.htm*.

The third National Health and Nutrition Examination Survey (NHANES III) began in the fall of 1988, and ended in the fall of 1994. The survey can be analyzed in two phases. Phase 1 was conducted from October 1988 to October 1991. Phase 2 began October 1991 and ended October 1994. Approximately 30,000 individuals were examined during the six years of the survey with 15,000 in each three-year sample. See: *http://www.cdc.gov/nchs/about/major/nhanes/datalink.htm#NHANESIII* for more information on NHANES III.

Survey participants in the current NHANES which began in 1999, who signed the consent document for future research, were informed that they would not receive the results from these studies. Therefore, only research projects that propose laboratory results that do not have clinical relevance to an individual will be accepted by NCHS. Clinical significance of a laboratory test will be judged by the NHANES Medical Officer, but the researcher should address this in the research proposal. See *http://www.cdc.gov/nchs/data/nhanes/00futstu.pdf* for a copy of the consent document. Though storage of blood specimens for future research was mentioned in the NHANES III consent document, a separate consent for use of these specimens was not obtained. The NHANES Ethics Review Board (ERB) has accepted the language in the NHANES III consent document to cover the use of the specimens, but only research projects that include results that are judged not to have clinical significance for participants will be accepted.

All proposals for use of NHANES samples will be evaluated by a technical panel for scientific merit and by the NHANES ERB for any potential human subjects concerns. The NHANES ERB will review the proposal even if the investigator has received approval by their institutional review panel.

The Technical Panel will evaluate the public health significance and scientific merit of the proposed research. Scientific merit will be judged as to the scientific, technical or medical significance of the research, the appropriateness and adequacy of the experimental approach, and the methodology proposed to reach the research goals. See ''Criteria for Technical Evaluation of Proposals'' below. The proposal should outline how the results from the laboratory analysis will be used. Because NHANES is a complex, multistage probability sample of the national population, the appropriateness of the NHANES sample to address the goals of the proposal will be an important aspect of scientific merit. The Technical Panel will assure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, or of the specific stated goals of the proposal.

Investigators are encouraged to review the NHANES data, survey documents, manuals and questionnaires at: *http://www.cdc.gov/nchs/about/major/nhanes/nhanes99–02.htm* or for NHANES III: *http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm*.

NHANES is a representative sample of the U.S. population. The survey oversamples the two largest race/ethnic minority groups, non-Hispanic blacks and Mexican Americans along with other subgroups of the population.

Sampling weights are therefore used to make national estimates of frequencies. The use of weights, sampling frame and methods of assessment of variables included in the data are likely to affect the proposed research. The Technical Panel will review the analysis plan and evaluate whether the proposal is an appropriate use of the NHANES population. Since data from NHANES 99+ is released in two-year cycles, proposals will only be accepted for use of specimens from the two years of a release cycle. Multiple two-year cycles may be requested but the need for the additional sample size should be justified. Proposals for NHANES III can request specimens from one or both phases of the survey.

Procedures for Proposals

All investigators (including CDC investigators) must submit a proposal for use of NHANES specimens.

Proposals are limited to a maximum of ten single-spaced typed pages, excluding figures and tables, using ten cpi type density. The cover of the proposal should include the name, address, and phone number and e-mail address of the principal investigator (PI) and the name of the institution where the laboratory analysis will be done. All proposals should be e-mailed to *gmm2@cdc.gov*.

The Criteria for Technical Evaluation of Proposals section at the end of this announcement and the following information should be used to develop the proposal content.

Research proposals that can use the NHANES III specimens, which has a large number of available samples but come from an earlier time period, will receive priority.

1. Specific Aims—List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested. NHANES is designed to provide prevalence estimates of diseases or conditions that are expected to affect between 5–10 percent of the population. Research proposals that expect much lower prevalence estimates need to provide more detail on why specimens from NHANES are needed for the project and provide details on how these data will be analyzed.

2. Background and Public Health Significance—Briefly describe in 1–2 pages the background of the proposal, identifying gaps in knowledge that the project is intended to fill. State concisely the importance of the research in terms of the broad, long-term objectives and public health relevance including a discussion of how the results will affect public health policy or further scientific knowledge. The proposal should justify the need for specimens that are representative of the U.S. population. Studies that do not need a national sample or request a subset of samples such that estimates cannot be weighted to make national estimates will not be accepted.

3. Clinical Significance or results—Since the consent document for specimen storage and continuing studies states that individual results will not be provided, the clinical significance of the proposed laboratory test should be addressed. The proposal should include a discussion of the potential clinical significance of the results and whether there is definitive evidence that results of the test would provide grounds for medical intervention. Any test with results that should be reported to a participant should be considered for inclusion in the concurrent survey, and is not appropriate for testing on the stored samples.

4. Research Design and Methods—Describe the research design and the procedures to be used. A detailed description of laboratory methods must be included with references. Laboratory quality control should be described. Include a justification for determination of sample size or a power calculation. If the researcher is requesting a sub-sample of specimens, a detailed description and justification, must be given. The researcher must describe how this sub-sample will be re-weighted to provide national estimates. The program will evaluate the study design and analysis plan in the proposal to determine whether the project is consistent with the design of the NHANES survey. Sub-samples are less useful to the research community when the data are released in the public domain, so such requests will receive a lower priority for the specimens. Restricting a research proposal to demographic categories that are design variables for the survey is encouraged if laboratory testing must be restricted.

5. Qualification of Investigators—A brief description of the Principal Investigator's expertise in the proposed area should be provided, including publications in this area within the last three years. A representative sample of earlier publications may be listed as long as this section does not exceed two pages.

6. Funding—The source and status of the funding to perform the requested laboratory analysis should be included. Investigators will be responsible for the cost of processing and shipping the samples. At this time the cost per specimen is $2.00. The basis for the cost structure is in the last section of this document. Reimbursement for the samples will be collected before the samples are released.

7. Timeline for laboratory tests—NHANES ERB approval of the individual research projects must be renewed every year. Investigators must have substantial progress (defined by the start of laboratory testing) in the first year, and all testing should be completed in the second year. The investigator should address his/her ability to comply with this timeline or request and justify additional time for the project. Return of the specimens will be requested if progress is not made in the project at the end of the second year. Refund of payment for the specimens will not be returned in this situation.

Requirements for the Inclusion of Women and Racial and Ethnic Minorities in Research

The following policy must be followed in the submitted proposals:

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in the CDC/ATSDR—supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in the OMB Directive No, 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women and racial ethnic minority populations are appropriately represented in applications for research involving human subjects. When clear and compelling rationale exists that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Submission of Proposals

Investigators are invited to submit proposals in MS Word format by e-mail to: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204 Hyattsville, MD 20782, telephone: 301–458–4371, fax: 301–458–4028, e-mail *gmm2@cdc.gov*.

Criteria for Technical Evaluation of Proposals

The following criteria will be used for technical evaluation of proposals:

1. Background and Public Health Significance: The public health significance, scientific merit and practical utility of the assay. The proposer should convey how the results will be used and the relationship of the results to the data already collected in NHANES. The proposer should include an analysis plan. The analyses ought to be consistent with the NHANES mission and the health status variables.

2. Research Design and Methods: The sampling scheme or age/race-ethnic/gender categories for the testing must be described and addressed with regards to its relationship to the NHANES design. Power calculations for a sub-sample must be included (*see* Procedures for Proposals for evaluation of proposals that suggest use of sub-samples). A list of variables that will be used in the initial data analyses should be included to demonstrate familiarity by the proposer with the dataset.

A detailed description of the laboratory methods should be included. The characteristics of the laboratory assay, such as reliability, validity, and ''state-of-the-art'', must be included with appropriate references. The potential difficulties and limitations of the proposed procedures should be discussed. The volume of specimen and the number of samples required should be specified. Adequate methods for handling and storage of samples must also be addressed. The laboratory must demonstrate expertise in the proposed laboratory test and the capability for handling the workload requested in the proposal.

3. Clinical Significance or results: Since the current consent document for specimen storage and continuing studies states that individual results will not be provided, the clinical significance of the proposed laboratory test should be addressed. The proposal should include a discussion of the potential clinical significance of the results and whether there is definitive evidence that results of the test would provide grounds for medical intervention. Any test with results that should be reported to a participant should be considered for inclusion in the concurrent survey, and are not appropriate for testing on the stored samples.

4. Discussion regarding the race/ethnicity variables: If all race/ethnic groups are not requested, the proposal gives a clear and compelling rationale for not including them.

5. Qualifications: A brief description of the requestor's expertise in the proposed area must be provided including publications in this area within the last three years. A representative sample of earlier publications may be listed as long as this section does not exceed two pages.

6. Period of performance—The project period should be specified. Substantial progress must be made in the first year, and the project should be completed in two years. If additional time is needed for the research project a detailed justification with a timeline should be included. At the end of the project period, any unused samples must be returned to the NHANES Specimen Bank or discarded. The NCHS Project Officer must be consulted about the disposition of the samples.

Approved Proposals

Approved projects will be provided specimens on receipt of a signed Materials Transfer Agreement (MTA) and a check (written to ''The Centers for Disease Control and Prevention'') for the cost of the specimens. All laboratory results obtained from the samples will be sent back to NCHS to be linked to the sequence number that is the linking identifier on the public use files. Within six months of the return of the data to NCHS, these data may be released to the public.

Agency Agreement

A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved will be completed before the release of the samples. This agreement will contain the conditions for use of the samples as stated in this document and as agreed upon by the investigators and CDC.

Progress Reports

Brief progress report will be submitted annually. This will be the basis for the NHANES ERB continuation reports that are also required annually.

Disposition of Results and Samples

No samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Technical Panel and the NHANES ERB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused samples must be returned to the Bank or disposed of upon completion of the approved project.

These results, once returned to NCHS, will be part of the public domain. The data will not be released until approximately six months after reporting the results to NCHS, to allow the investigator time to publish results, unless otherwise required by Federal law.

Proposed Cost Schedule for Providing NHANES III DNA Specimen Bank

A nominal processing fee of $2.00 is proposed for each sample received from the NHANES Specimen Bank. The costs include both the collection, storage and processing of the specimens along with the review of proposals and the preparation of the data files. These costs were based on an assumption that NCHS will receive and process four proposals in a year, each requesting 5000 samples as shown in the table below.

The materials listed are for the recurring laboratory costs to dispense and prepare the samples during collection and for shipping; the computer software needed for the preparation of the data files and for the release of the data along with documentation on the NHANES Web page. Labor costs are based on a proposal administrator and computer programmers at NCHS to prepare the data files. The storage fee is the cost of storage at the NHANES repository.

Total costs	Cost per vial
Labor	$0.30
Storage	0.28
Pulling specimens	0.68
Shipping	0.20
Subtotal	1.46
NCHS overhead (15%)	0.22
Subtotal	1.68
CDC/FMO overhead (20%)	0.34
Total	2.00

Comments are solicited on the proposed cost schedule. Comments are due by: June 23, 2004.

Send Comments and Requests for Information to: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204 Hyattsville, MD 20782, phone: 301–458–4371; fax: 301–458–4028, e-mail *gmm2@cdc.gov*.

Dated: May 12, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 04–11635 Filed 5–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families, Children's Bureau; Demonstration Projects in Post-Adoption Services and Marriage Education

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–CO–0021.

CFDA Number: 93.652.

Due Date for Applications: The due date for receipt of applications is July 23, 2004.

I. Funding Opportunity Description

The purpose of this funding opportunity is to support continuous innovation and improvement in the quality of post-adoption services designed to improve outcomes for adopted children and their families. Funded projects will implement and evaluate post-adoption services which include a marriage education component.

These post-adoption demonstration projects will provide services to strengthen and preserve families who have adopted children from public child welfare systems. The services provided must add to, not take the place of services supported by any other funds available to the applicant for the same general services.

These projects will include implementation and evaluation of an articulated, specifiable program supporting marriage relationships targeting adoptive parents. The program must promote healthy marriage and family formation as a means of achieving safety, permanency, and well-being for adopted children and their families, particularly those in the child welfare system. By supporting adoptive couples through marriage strengthening services, parents are expected to be better able to meet the unique stresses of adopting a child. Marriage education services that are provided will work to strengthen and protect the well-being of both children and families.

The Children's Bureau is interested in projects that identify the needs of adoptive families and propose a feasible and appropriate plan for providing a wide range of services, including marriage education, to meet these needs. The proposed design must include marriage education. Additional services may include education and support for families and children, services to prevent adoption disruption, and crisis intervention. Services provided by the proposed project may include respite care, individual, group and/or family counseling, case management, and assistance to adoptive parents, adopted children, and siblings of adopted children.

All projects must be administered by agencies that have child welfare, adoption, post-adoption and marriage education experience. This includes organizations with expertise in child welfare and adoption, and organizations which currently serve children in the public child welfare system. Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Background Information

According to 2003 estimates, the number of children in out-of-home care is approximately 534,000. Children entering substitute care have complex problems that require intensive services. Many of these children have special needs because they are born to mothers who did not receive prenatal care, are born with life-threatening conditions or disabilities, are born addicted to alcohol or other drugs, have been exposed to infection with the etiologic agent for the human immunodeficiency virus (HIV), or have been victims of child abuse and neglect. Each year thousands of children are in need of placement in a permanent home. Most of these children are difficult to place because they are older or may be part of a sibling group. Currently, there are approximately 126,000 children waiting for adoption.

Professionals in the adoption field have long realized that agency services to adoptive families should not end with the legalization of the adoption. These children and families still face many challenges in achieving adoption stability. The Adoption Opportunities program, section 205 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, (Pub. L. 95–266), as amended by the Keeping Children and Families Safe Act of 2003 (Pub. L. 108–36), authorizes funds to meet these needs.

Research and practice experience over the past two decades have shown that children once thought unadoptable can be placed in permanent homes, but not all children placed remain with their adoptive parents. Studies on adoption disruption indicate that children may have difficulty adjusting to their adoptive families due to the loss and trauma they experienced prior to placement; and psychological, emotional and behavioral problems may emerge over time as these children mature. Adoptive families also confront many challenges in addressing the needs of these children; therefore, these children and families have an on going, long-term need for services.

ACF has undertaken several crosscutting program and field activities to promote the national marriage and responsible fatherhood agenda, engaging States, communities, and faith-based organizations in a partnership with ACF. This priority area provides a unique opportunity to gather evidence about how communities can improve outcomes for adopted children and their families by strengthening marriage and promoting family life.

These demonstration grant activities will help spur new approaches that will promote child safety, stability, and well-being by strengthening the relationships between parents.

These programs will work to improve outcomes for adopted children and their families by working closely with adoptive parents to strengthen their relationship skills and improve the quality of family life. Along with the skills that enable couples to communicate more effectively, manage conflict, and work together as a team, these demonstration programs can also teach the benefits that can be obtained from identifying expected challenges in relationships so that these challenges can be successfully negotiated when they arise.

Marriage education is based on the premise that couples can learn how to build and maintain successful, stable marriages. One approach is based on research into what distinguishes marriages that succeed from those that fail. Research has found that it is not that successful couples have fewer differences or less to fight about, but rather that they are able to effectively handle their inevitable differences or disagreements.[1] Through marriage education couples can learn how to do more of what makes marriages successful and less of what causes marital unhappiness and breakdown. These projects will provide this opportunity to strengthen parenting/marital skills within a healthy and supportive relationship.

Programs or specific elements of the proposed program must be based on and supported by evidence from research or evaluations of the programs. The

[1] ''Predicting Marital Happiness and Stability from Newlywed Interactions'', *Journal of Marriage and the Family;* Minneapolis; Feb 1998; John M Gottman; James Coan; Sybil Carrere; Catherine Swanson.

programs proposed here may be refined from existing programs or fully replicated programs that may have targeted participants other than those identified here. The programs submitted in response to this competition should test the existing model with these participants and help the participants develop a set of particular, measurable, and definable skills. The partnership between the child welfare agency and the experienced marriage education service provider must be described as well.

This funding opportunity is intended to support projects that contribute to the continued expansion of knowledge about the familial and systemic aspects of successful adoptions, as well as the benefits of support for healthy marriages, responsible fatherhood, and positive youth development to successful adoptions. It is believed that the inclusion of faith-based and community organizations is important to developing and sustaining programs that support safety, permanency and well-being for children and families within urban and rural communities. Applicants are encouraged to develop projects that are highly innovative and demonstrate approaches that improve outcomes for adopted children and their families.

Note: Activities funded under this funding announcement are demonstration projects. At the Children's Bureau a demonstration project is one that puts into place and tests new, unique or distinctive approaches for delivering services to a specific population. Demonstration projects may test whether a program or service that has proven successful in one location or setting can work in a different context. Demonstration projects may test a theory, idea, or method that reflects a new and different way of thinking about service delivery. Demonstration projects may be designed to address the needs of a very specific group of clients, or focus on one service component available to all clients. The scope of these projects may be broad and comprehensive or narrow and targeted to specific populations. A demonstration project must:

(a) Develop and implement an evidence-based model with specific components or strategies that are based on theory, research, or evaluation data; or, replicate or test the transferability of successfully evaluated program models;

(b) Determine the effectiveness of the model and its components or strategies using multiple measures of results; and

(c) Produce detailed procedures and materials, based on the evaluation, that will contribute to and promote evidence-based strategies, practices and programs that may be used to guide replication or testing in other settings.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: The anticipated total funding for all awards under this funding opportunity in FY 2004 is $2 million.

Anticipated Number of Awards: It is anticipated that up to 7 projects will be funded.

Ceiling on Amount of Individual Awards: The grant amount will not exceed $300,000 in the first budget period. The Children's Bureau reserves the right to change this amount in subsequent budget periods. An application received that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $300,000 per budget period.

Project Periods for Awards: The projects will be awarded for a project period of 60 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
State controlled institutions of higher education
Native American tribal governments (Federally recognized)
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Non-profits that do not have 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organizations other than small businesses
Small businesses

Faith-based organizations are eligible to apply for these grants.

Additional Information on Eligibility: Non-profit organizations, including community and faith-based organizations are eligible to apply. Non-profit applicants must demonstrate proof of their status and this proof must be included in their applications. 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.

Applicants are cautioned that the ceiling for individual awards is $300,000. Applications exceeding the $300,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

2. Cost Sharing or Matching

The grantee must provide at least 10 per cent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for a $300,000 grant:

$300,000 (Federal share)
divided by .90 (100% − 10%)
equals $333,333 (total project cost including match)
minus $300,000 (Federal share)
equals $33,333 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

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.*

Applications that exceed the $300,000 ceiling 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, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132; Telephone: (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in 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 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 paper format.
- You may submit all documents electronically, including all information typically included on the SF424 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 form 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.

Each application must contain the following items in the order listed:

1. 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 at the end 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.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided and those in the Uniform Project Description. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction 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 when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

A duly authorized representative of the applicant organization must certify that the applicant is in compliance with the Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke).

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.

Adoption Opportunities program applicants are not required to submit their applications to Single Points of Contact (SPOC).

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:

1. The applicant will have the project fully functioning 90 days of the notification of the grant award.

2. The applicant will participate if the Children's Bureau chooses to do a national evaluation or a technical assistance contract that relates to this priority area.

3. All reports will be submitted in a timely manner, in recommended format (to be provided), and the final report will also be submitted on disk or electronically using a standard word-processing program.

4. 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 Adoption Information Clearinghouse, 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.

5. Allocate sufficient funds in the budget to:

a. Provide for the project director and evaluator to attend an annual 3-day grantees' meeting in Washington, DC.

b. Provide for the project director and evaluator to attend an early kickoff meeting for grantees funded under this priority area to be held within the first three months of the project (first year only) in Washington, DC.

c. Provide for 10–15 percent of the proposed budget to project evaluation.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides website information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 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.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

4. 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. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this funding opportunity announcement providing information that addresses all the components.

6. Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

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 earning 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 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.

7. 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.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 80 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) 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 the section titled Deadline at the beginning of the announcement. The original copy of the application must have original signatures, signed in black ink.

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 if otherwise required for individuals. The copies may include summary salary information.

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.

Applicants have the option of omitting form application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

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 *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.

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 of this funding opportunity 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 date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on July 23, 2004. Mailed applications received after 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 July 23, 2004 the deadline date. Applications must be mailed to the following address: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

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, 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.

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

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/grants/form.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.
3.d. Environmental Tobacco Smoke Certification.	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 opportunity announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria	See instructions in this funding opportunity announcement.	See application due date.

What to submit	Required content	Required form or format	When to submit
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. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	See above	See application due date.

Additional Forms

Private-non-profit organizations are encouraged to 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/forms.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC), Notification under Executive Order 12372.

Adoption Opportunities program applicants are not required to submit their applications to Single Points of Contact (SPOC).

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: 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 address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. 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: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. 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.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: www.Grants.gov.

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132.

V. Application Review Information

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. 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.

Instruction

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.

1. Criteria

General Instruction for Preparing Full Project Description

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 applicant demonstrates an understanding of the goals and objectives of the Adoption Opportunities legislation. This includes the extent to which the proposed project will contribute to achieving those goals and objectives, including goals stated in the purpose and background sections of this funding opportunity announcement.

(2) The extent to which the applicant presents a clear vision of the service system for the target population, including a clear statement of the goals (end products of an effective project) and objectives (measurable steps for reaching these goals) of the proposed project. The extent to which these goals and objectives are based on a thorough understanding of the characteristics of the clients and the context of the proposed intervention.

(3) The extent to which the applicant demonstrates a thorough understanding of the characteristics of the target population, the service needs of this population and community, and the status of existing services for adopted children, adolescents and their families/caregivers.

(4) The extent to which the applicant's review of the literature is comprehensive and reflects a clear understanding of the research on best practices and promising approaches in post-adoption services and marriage education. This includes the extent to which the review of literature provides evidence that the proposed project is innovative and, if successfully implemented and evaluated, likely to yield findings or results that will contribute to and promote evidence-based practices that will be useful to other agencies and organizations in developing effective services and programs to address the issues effectively.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which the applicant provides a reasonable timeline for implementing the proposed project, including major milestones and target dates. The extent to which the applicant describes the factors that could speed or hinder project implementation, and explains how these factors would be managed.

(2) The extent to which there is a detailed description of the services to be provided by the program. The extent to which this program will bridge gaps or substantially improve the current service delivery system and benefit the target population. The extent to which the proposed services are comprehensive in scope, will address a broad range of the target population's needs, and include services identified in the purpose and background sections of this funding announcement.

(3) The extent to which the design of the proposed project is evidence-based, reflects up-to-date knowledge from the research and literature on known effective practices, and builds on current theory, research, evaluation data and best practices. The extent to which the project will contribute to increased knowledge or understanding of the problem, issues, or effective strategies and practices in the field. The extent to which the logic model for this project demonstrates strong links between proposed inputs and activities, and intended short-term and long-term outcomes. The extent to which the logic model clearly shows how the achievement of these outcomes would be measured.

(4) The extent to which the project will be culturally responsive to the target population.

(5) The extent to which the proposed services will involve the collaboration of appropriate partners for maximizing the effectiveness of service delivery. The extent to which there are letters of commitment or memoranda of understanding from organizations, agencies, and consultants that will be partners or collaborators in the proposed project. The extent to which these documents describe the role of the agency, organization, or consultant and detail specific tasks to be performed.

(6) The extent to which there is a sound plan for effectively evaluating the achievement of the project's objectives, customer satisfaction, processes, outcomes, impact, the effectiveness of project strategies and the efficiency of the implementation process. The extent to which there is a reasonable plan for securing an external evaluator, if not using internal resources for project evaluation.

(7) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative outcome data. The extent to which the proposed evaluation plan would be likely to yield findings or results about effective strategies, and contribute to and promote evaluation research and evidence-based practices that could be

used to guide replication or testing in other settings.

(8) The extent to which useful data on individuals and families, types of services provided, services used, and types and nature of needs identified and met will be effectively collected. The extent to which there is a sound plan for an Institutional Review Board (IRB) review, if applicable.

(9) The extent to which the products that would be developed during the proposed project would provide information on strategies utilized and the outcomes achieved that would support evidence-based improvements of practices in the field. The extent to which the plan for developing and disseminating these products is reasonable and appropriate in scope and budget.

(10) 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 extent to which there is a sound plan for effectively disseminating information, through appropriate mechanisms and forums, that will successfully convey the information to, and support replication by, other interested agencies.

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, implementing, and evaluating innovative projects, programs, or service delivery systems in the post-adoption and marriage education fields.

(2) The extent to which the applicant has sufficient organizational resources to implement and evaluate the proposed project effectively, including sufficient capacity for administration, program operations, data processing and analysis, reporting and dissemination of findings.

(3) The extent to which the applicant's proposed project director, key project staff, and consultants have the necessary technical skill, knowledge, and experience to carry out their responsibilities effectively, including administration, program operations, data collection and analysis, reporting and dissemination of findings. The extent to which current and proposed staff has the capacity to fill the described roles effectively. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(4) The extent to which the management plan details a realistic approach to achieving the objectives of the proposed project on time and within budget. The extent to which this plan includes clearly defined responsibilities timelines and benchmarks for accomplishing project tasks. 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 applicant demonstrates that the project cost and budget information submitted on the standard 424 and 424A for the proposed program are reasonable and justified in terms of the proposed tasks and anticipated outcomes. The extent to which fiscal controls and accounting procedures are in place to ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under this program announcement.

(2) The extent to which the applicant documents allocation of sufficient funds in the budget to:

a. Provide for the project director and evaluator to attend an annual 3-day grantees' meeting in Washington, DC.

b. Provide for the project director and evaluator to attend an early kickoff meeting for grantees funded under this priority area to be held within the first three months of the project (first year only) in Washington, DC.

c. Provide for 10–15 percent of the proposed budget to project evaluation.

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.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. The Federal government may elect to fund applications in FY 2005 out of the pool of applications submitted under this announcement, subject to the availability of resources in FY 2005 and the number of acceptable applications received.

VI. Award Administration Information

1. Award Notices

Anticipated Announcement and Award Dates: Applications will be reviewed summer 2004. Grant awards will have a start date no later than September 30, 2004.

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

Grantees are subject to the requirements of 45 CFR part 74 (nongovernmental) or 45 CFR part 92 (governmental).

3. Reporting

Reporting Requirements: All grantees are required to submit semi-annual program and financial reports (SF269) with a final report due 90 days after the 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 Adoption Information Clearinghouse, 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.

VII. Agency Contacts

Program Office Contact

Geneva Ware-Rice, 330 C St, SW., Washington, DC 20447, 202–205–8354, *gware-rice@acf.hhs.gov.*

Grants Management Office Contact

William Wilson, 330 C St SW., 20447, Washington, DC, 202–205–8913, *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 websites: *http://www.acf.hhs.gov/programs/cb/.*

Dated: May 18, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–11645 Filed 5–21–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0574]

Listeria Monocytogenes; Petition To Establish a Regulatory Limit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed that requests that the agency establish a regulatory limit of 100 colony forming units per gram for *Listeria monocytogenes* in foods that do not support the growth of the microorganism. The agency is requesting comment on the petition. The agency is also requesting the submission of relevant data and information to assist it in evaluating and responding to the petition.

DATES: Submit written or electronic comments by August 9, 2004.

ADDRESSES: You may submit comments, identified by Docket No. 2003P–0574, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2003P–0574 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. 2003P–0574 for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the petition, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Office of Compliance (HFS–600), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2359.

SUPPLEMENTARY INFORMATION:

I. The Petition

Fifteen trade associations (the American Bakers Association, the American Frozen Food Institute, the American Meat Institute, the Grocery Manufacturers of America, the International Ice Cream Association, the Midwest Food Processors Association, the National Cheese Institute, the National Chicken Council, the National Fisheries Institute, the National Food Processors Association, the National Milk Producers Federation, the National Turkey Federation, the Northwest Food Processors Association, the Snack Food Association, and the United Fresh Fruit and Vegetable Association) (the petitioners) submitted a citizen petition on December 24, 2003, requesting that FDA amend the regulations in part 109

Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material (21 CFR part 109) to establish a regulatory limit for *L. monocytogenes* of 100 colony forming units per gram in foods that do not support growth of the microorganism.

Petitioners assert that the requested regulatory limit would establish a science-based standard for the presence of *L. monocytogenes* in such foods, noting that their request is based on new and emerging evidence that consumer protection is a function of the organism's cell numbers in food, and not its mere presence. Petitioners further assert that a regulatory limit will permit FDA and the food industry to distinguish products for which increased scrutiny is prudent from those for which greater attention will not yield a corresponding benefit to public health. Petitioners state that a risk-based approach to *L. monocytogenes* is consistent with the comprehensive risk assessment undertaken by FDA and the U.S. Department of Agriculture's Food Safety and Inspection Service, in which the agencies concluded that ''targeted initiation of new or enhanced controls may be needed to achieve further reductions in the incidence of listeriosis.'' In addition, petitioners assert that there is general scientific agreement that low levels of *L. monocytogenes* are not uncommon in the food supply and that such low levels are regularly consumed without apparent harm.

For over 15 years, FDA has been working with its Federal, State, and local food safety counterparts to reduce the incidence of foodborne illness in the United States, including illness caused by *L. monocytogenes*. The action requested in the petition directly bears on the safety of the food supply and FDA's longstanding effort. Accordingly, FDA is requesting public comment on the petition as well the submission of any relevant data or information that could assist the agency's evaluation of or its response to the petition.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the petition. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. If your comments are based on scientific data or other evidence, please submit copies of such information with your comments. The petition and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–11597 Filed 5–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank: Change in Self-Query Fee

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a two-dollar decrease in the fee charged to practitioners who request information about themselves (self-query) from the National Practitioner Data Bank (NPDB). The new fee to self-query the NPDB will be $8.00. There will be no change to the $4.25 entity fee.

DATES: The fee is effective on July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Darryl Gray, Acting Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, 7519 Standish Place, Suite 300, Rockville, Maryland 20857, Tel: (301) 443–2300. E-mail: *policyanalysis@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The current fee structure ($10.00 per self-query) was announced in the **Federal Register** on April 22, 2003 (68 FR 19837). All self-queries are submitted and query responses received through the NPDB's Integrated Query and Reporting Service (IQRS) and paid via credit card.

The NPDB is authorized by the Health Care Quality Improvement Act of 1986 (the Act), Title IV of Pub. L. 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the NPDB. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12(b) of the regulations, as well as allowable costs pursuant to Title II, Division E, Labor, Health and Human Services, and Education, and Related Agencies Appropriations 2004, Pub. L. 108–199, enacted on January 23, 2004. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

''The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees, (2) Photocopying or other forms of reproduction, such as magnetic tapes-actual cost of the operator's time, plus the cost of the machine time and the materials used, (3) Postage-actual cost, and (4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.''

Based on analysis of the current operational costs involved with processing self-queries, the Department is reducing the self-query fee by $2.00. The cost reduction is justified based on the NPDB's transition from a paper reporting and querying process to an all electronic, web-based system, the IQRS. This move to online reporting and querying has streamlined the operational processes required to manage self-query requests. In addition, other enhancements to the IQRS, such as online filing and payment for self-queries have resulted in decreased operational expenditures. In keeping with the Act, and pursuant to the requirements of § 60.12 of the regulations, there are sufficient funds to recover the full costs of operating the Data Bank with a decrease in the self-query fee.

According to the new fee schedule, a practitioner will be charged $8.00 per self-query submitted to the NPDB. The entity fee for querying the NPDB will remain $4.25 per name. For examples, see the table below.

Query method	Fee per name in query	Examples
Entity query (via Internet with electric payment)	$4.25	10 names in query. 10 × $4.25 = $42.50.
Practitioner self-query	8.00	One self-query = $8.00.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Dated: May 18, 2004.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. 04–11684 Filed 5–21–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection: Request for Public Comment: 30-Day Notice

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 30 day proposed information collection: IHS Scholarship Program Application.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (66 FR 66912) on February 24, 2004 and allowed 60-days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30-days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0006, ''IHS Scholarship Program Application.'' *Type of Information Collection Request:* Previously Approved Collection. *Form Number(s):* IHS–856, 856–2, through 856–8, IHS–815, IHS–816, IHS–817, IHS–818, D–02, F–02, F–04, G–02, G–04, H–07, H–08, J–04, J–05, K–03, K–04, and L–03. Reporting formats are contained in an IHS Scholarship Program application booklet. *Need and Use of Information Collection:* The IHS Scholarship Branch needs this information for program administration and uses the information to solicit, process and award IHS Pre-graduate, Preparatory and/or Health Professions Scholarship grantees and monitor the academic performance of awardees, to place awardees at payback sites, and for awardees to request additional program. The IHS Scholarship Program plan to streamline the application to reduce the time needed by applicants to complete and provide the information and the plan to use information technology to make the application electronically available on the internet have been delayed. *Affected Public:* Individuals, not-for-profit institutions and State, local or Tribal Government. *Type of Respondents:* Students pursuing health care professions.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instruments(s)	Number of respondents	Response per respondent	Total annual response	Burden hour per response *	Annual burden hours
Scholarship Application (IHS–856)	1500	1	1500	1.00 (60 min)	1500
Checklist (856–2)	1500	1	1500	0.13 (8 min)	195
Course Verification (856–3)	1500	1	1500	0.70 (42 min)	1050
Faculty/Employer Application (856–4)	1500	2	3000	0.83 (50 min)	2490
Justification (856–5)	1500	1	1500	0.75 (45 min)	1125
Federal Debt (856–6)	1500	1	1500	0.13 (8 min)	195
MPH only (856–7)	25	1	25	0.83 (50 min)	21
Accept/Decline (856–8)	650	1	650	0.13 (8 min)	84
Receipt of Application (815)	1500	1	1500	0.03 (2 min)	45
Address Change Notice (816)	25	1	25	0.02 (1 min)	5525
Scholarship Program Agreement (817)	850	1	850	0.05 (3 min)	43
Stipend Checks (D–02)	100	1	100	0.13 (8 min)	13
Enrollment (F–02)	1300	1	1300	0.13 (8 min)	169
Academic Problem/Change (F–04)	50	1	50	0.13 (8 min)	6
Request Assistance (G–02)	217	1	217	0.13 (8 min)	28
Summer School (G–04)	193	1	193	0.10 (6 min)	19
Health Professions Contract (818)	850	1	850	0.05 (3 min)	33
Placement (H–07)	250	1	250	0.18 (11 min)	45
Graduation (H–08)	250	1	250	0.17 (10 min)	43
Site Preference (J–04)	150	1	150	0.13 (8 min)	20
Travel Reimb (J–05)	150	1	150	0.10 (6 min)	15
Status Report (K–03)	250	1	250	0.25 (15 min)	63
Preferred Assignment (K–04)	200	1	200	0.75 (45 min)	150
Request of Deferment (L–03)	20	1	20	0.13 (8 min)	3
Total	15,830				7,380

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function: (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Ms. Chris Ingersoll, IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 350, Rockville, MD 20852–1601, or call non-toll free (301) 443–5938 or send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *cingerso@hqe.ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: April 29, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–11599 Filed 5–21–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Community Mental Health Centers (CMHC) Construction Grantee Checklist—(OMB No. 0930–0104, Extension, no change)—Recipients of Federal CMHC construction funds are obligated to use the constructed facilities to provide mental health services. The CMHS Act was repealed in 1981 except for the provision requiring grantees to continue using the facilities for mental health purposes for a 20-year period. In order for SAMHSA's Center for Mental Health Services to monitor compliance of construction grantees, the grantees are required to submit an annual report. This annual Checklist enables grantees to supply necessary information efficiently and with a minimum of burden. The following table summarizes the annual burden for this program.

	Annual respondents	Responses/ respondent	Hours per response	Annual burden
CMHS Grantee Construction Checklist [42 CFR 54.209(h), 42 CFR 54.213, 42 CFR 54.214]	6	1	.42	3

Written comments and recommendations concerning the proposed information collection should be sent by June 23, 2004, to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: May 14, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–11639 Filed 5–21–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCY: Department of the Interior, Office of the Assistant Secretary—Water and Science (Interior).

ACTION: Notice of intent to negotiate contracts and agreements among Interior, Central Utah Water Conservancy District (CUWCD), and other parties required to implement the Utah Lake Drainage Basin Water Delivery System as authorized in section 202(a)(1) of the Central Utah Project Completion Act (CUPCA), which is part of the Bonneville Unit of the Central Utah Project.

SUMMARY: On March 25, 2004, Interior, CUWCD, and the Utah Reclamation Mitigation and Conservation Commission filed a Draft Environmental Impact Statement (DEIS) for the Utah Lake Drainage Basin Water Delivery System (Utah Lake System), Bonneville Unit, Central Utah Project with the Environmental Protection Agency and made the draft EIS available for public review and comment. The draft EIS identified several contracts and agreements among the involved parties required to implement the Utah Lake System.

DATES: Dates and locations for public negotiation sessions on the contracts and agreements will be announced in local newspapers.

SUPPLEMENTARY INFORMATION: The Utah Lake System is one of the systems of the Bonneville Unit of the Central Utah Project that would develop central Utah's water resources for municipal and industrial supply, fish and wildlife, and recreation. The Utah Lake System Preferred Alternative would provide an average transbasin diversion of 101,900 acre-feet which consists of 30,000 acre-feet of Municipal and Industrial (M&I) secondary water to southern Utah

County and 30,000 acre-feet of M&I water to Salt Lake County water treatment plants; 1,590 acre-feet of M&I water already contracted to southern Utah County cities, and 40,310 acre-feet of M&I water to Utah Lake for exchange to Jordanelle Reservoir. The Preferred Alternative is analyzed in the March 2004, Utah Lake System Draft Environmental Impact Statement and in the March 2004, Draft Supplement to the Bonneville Unit Definite Plan Report. Implementation of the Utah Lake System requires the execution of contracts and agreements among the parties involved with the project. The contracts and agreements to be publicly negotiated will include repayment, construction, funding, water petitions, Warren Act conveyance, water conservation, and other related documents.

Information, Comments, and Inquiries: Pursuant to the Reclamation Project Act of 1939, section 9(f), 43 U.S.C. 485h(f), interested parties may submit written data, views and arguments concerning the contracts and agreements to the address below. Additional information on matters related to this notice can also be obtained from: Mr. Reed Murray, 302 East 1860 South, Provo Utah, 84606, (801) 379–1237, *rmurray@uc.usbr.gov.*

Dated: May 18, 2004.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 04–11641 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[GWCRC Meeting Notice No. 4–04]

Guam War Claims Review Commission

The Guam War Claims Review Commission, pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 10), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business, as follows:

Date and Time: Wednesday, June 2, 2004, 10 a.m.; Thursday, June 3, 2004, 10 a.m.; Friday, June 4, 2004, 10 a.m.

Place: 600 E St., NW., Room 6002, Washington, DC.

Subject Matter: Discussion of the report which the Commission is required to submit to the Secretary of the Interior and Congressional committees under the Guam War Claims Review Commission Act, Public Law 107–333.

Status: Open.

Requests for information concerning these meetings should be addressed to David Bradley, Executive Director, Guam War Claims Review Commission, c/o Foreign Claims Settlement Commission of the United States, 600 E St., NW., Washington DC 20579, telephone (202) 616–6975, FAX (202) 616–6993.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 04–11602 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–93–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for McNary and Umatilla National Wildlife Refuges and Notice of Two Public Open Houses

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent and notice of two public open houses.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) intends to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the McNary and Umatilla National Wildlife Refuges (NWRs). The FWS is furnishing this notice in accordance with the National Wildlife Refuge System Administration Act, National Environmental Policy Act, and their implementing regulations in order to: Advise other agencies and the public of our intentions; and obtain suggestions and information on the scope of issues to include in the CCP and EA. Opportunities for public input will be announced throughout the CCP/EA planning and development process.

DATES: Please provide written comments on the scope of the CCP/EA by July 8, 2004. Two public open houses will be held. The first one is scheduled for June 16, 2004, from 6 p.m. to 9 p.m. at the McNary National Wildlife Refuge Environmental Education Center in Burbank, Washington. The second open house is scheduled for June 23, 2004, from 6 p.m. to 9 p.m. at the Riverfront Center, in Boardman, Oregon (addresses follow).

ADDRESSES: Address comments, questions, and requests for further information to: Gary Hagedorn, Project Leader, Mid-Columbia River National Wildlife Refuge Complex, PO Box 2527, Pasco, WA 99302–2527. Comments may be faxed to (509) 545–8670, or e-mailed to *fw1planningcomments@fws.gov* as well. Additional information concerning the NWRs is available on the following Internet site: *http://midcolumbiariver.fws.gov/.* Addresses for the public open house locations follow.

1. McNary National Wildlife Refuge Environmental Education Center, 311 Lake Road, Burbank, WA. Directions: From Pasco, Washington, follow State Highway 12 East over the Snake River; turn left onto Maple Street; and follow signs into McNary NWR parking lot.

2. Riverfront Center, 2 Marine Drive, Riverfront Room, Boardman, OR. Directions: From Interstate 84, take the City of Boardman Exit #165; turn north onto Main Street; cross the railroad overpass; turn right onto Marine Drive; and travel approximately one mile to the Riverfront Center on the Columbia River.

FOR FURTHER INFORMATION CONTACT: Gary Hagedorn, Project Leader at (509) 545–8588.

SUPPLEMENTARY INFORMATION: By Federal law (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Refuge Administration Act] 16 U.S.C. 668dd–668ee), all lands within the National Wildlife Refuge System will be managed in accordance with an approved CCP by 2012. A CCP guides management decisions; and identifies refuge goals and long-range objectives and strategies for achieving the purposes for which a refuge was established. During the CCP planning process, many elements will be considered including: Wildlife and habitat management, public use opportunities, and cultural resource protection. Public input into the planning process is essential. The CCP for Umatilla and McNary NWRs will describe desired conditions for the refuges and how FWS will implement management strategies. The FWS will prepare an EA in accordance with procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Umatilla NWR encompasses 26,888 acres with units along the Columbia River in both Washington and Oregon. It was established in 1969 to mitigate wildlife habitat losses that occurred when the habitat was flooded after completion of the John Day Lock and Dam. A large portion of the Umatilla NWR is owned by the U.S. Army Corps of Engineers (USACE) and is managed by the FWS under Cooperative Agreement ''for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon.''

McNary NWR encompasses approximately 15,894 acres located 30 miles upstream of Umatilla NWR, near Burbank, Washington. It was established in 1953 as mitigation for wildlife habitat losses that occurred when the Columbia River corridor was flooded after completion of the McNary Dam which created Lake Wallula. Seven areas were identified in a General Plan, completed in 1953, and signed by the Secretaries of Army and Interior, and the Directors of Fish and Game for both Oregon and Washington. Each of these areas were to be managed ''for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon.'' For most of the intervening years, the FWS managed two of these seven areas as McNary NWR, though most of the underlying ownership was still held by the USACE. The State of Washington, and later the USACE, managed the other areas identified in the General Plan known as Habitat Management Units. In 1999, legislation was passed transferring ownership of the existing 3,636-acre McNary NWR from the USACE to FWS in fee title. The legislation also authorized the USACE, FWS, and Port of Walla Walla to negotiate an exchange of NWR lands with the Port. As a result, the FWS was granted management responsibility for four USACE Habitat Management Units adjacent to McNary NWR under terms of a cooperative agreement signed in January 2000. The USACE continues to own the lands while both agencies work toward permanent transfer in fee title.

Habitat types found on both refuges include shrub-steppe uplands, croplands, woody riparian areas, basalt cliffs, emergent marshes, and large open water marshes due to inundation of Lake Umatilla and Lake Wallula. Several islands were also created when these reservoirs were flooded. Both refuges provide important migratory and wintering habitat for numerous bird species especially waterfowl.

Preliminary Issues, Concerns, and Opportunities

The FWS has identified the following preliminary issues, concerns, and opportunities:

Habitat Management and Restoration: What actions shall the NWRs take to sustain and restore priority species and habitats over the next 15 years?

Public Use and Access: What kinds of recreation opportunities should be provided? Are existing access points and NWR uses adequate and appropriate?

Invasive Species Control: How do invasive species affect functioning native systems and what actions should be taken to reduce the incidence and spread of invasive species?

Dated: May 14, 2004.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 04–11632 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Recovery Plan for Five Freshwater Mussels—Cumberland Elktoe (*Alasmidonta atropurpurea*), Oyster Mussel (*Epioblasma capsaeformis*), Cumberlandian Combshell (*Epioblasma brevidens*), Purple Bean *Villosa perpurpurea*), and Rough Rabbitsfoot (*Quadrula cylindrica strigillata*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the final recovery plan for five freshwater mussels—Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpururea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*). These species are endemic to the Cumberland and Tennessee River systems in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Recent research has greatly increased our understanding of the ecology of these species. The recovery plan includes specific recovery objectives and criteria to be met in order to downlist these mussels to threatened status or delist them under the Endangered Species Act of 1973, as amended.

ADDRESSES: Copies of this recovery plan are available by request from Bob Butler, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 828/258–3939, Ext. 235). Recovery plans that have been approved by the Fish and Wildlife Service are also available on the Internet at *http://endangered.fws.gov/recovery.*

FOR FURTHER INFORMATION CONTACT: Bob Butler at the address and telephone number given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that we provide public notice and an opportunity for public review and comment during recovery plan development. A notice of availability of the agency draft recovery plan for these five mussel species was published in the **Federal Register** on April 22, 2003 (68 FR 19844). A 60-day comment period was opened with the notice, closing on Monday, June 23, 2003. We received comments from 16 interested parties and from six mussel experts who served as official peer reviewers of the recovery plan. All persons who submitted comments supported the recovery plan and the Service's efforts to recover these species. Comments and information submitted by peer reviewers and other interested parties have been considered in the preparation of this final plan and, where appropriate, incorporated.

These five mussels were listed as endangered species under the Act on January 10, 1997 (62 FR 1647). These species are restricted to the Cumberland River system (Cumberland elktoe), the Tennessee River system (purple bean and rough rabbitsfoot), or to both river systems (oyster mussel and Cumberlandian combshell). They once existed in thousands of stream miles and now survive in only a few relatively small, isolated populations many of questionable long-term viability. These populations are found in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Currently they occur in the Clinch River (Tennessee and Virginia), Duck River (Tennessee), Nolichucky River (Tennessee), Powell River (Tennessee and Virginia), Bear Creek (Alabama and Mississippi), Beech Creek (Tennessee), Buck Creek (Kentucky), Cooper Creek (Virginia), Indian Creek (Virginia), Marsh Creek (Kentucky), Sinking Creek (Kentucky), Laurel Fork (Kentucky), Big South Fork (Kentucky

and Tennessee), and several tributaries in the Big South Fork drainage (Rock Creek, Kentucky; New River, Bone Camp Creek, Crooked Creek, North White Oak Creek, and White Oak Creek, all Tennessee). Habitat alternation continues to be the major threat to the continued existence of these species. The species and their habitats are currently being impacted by excessive sediment bed loads of smaller sediment particles, changes in turbidity, increased suspended solids (primarily resulting from nonpoint-source loading from poor land-use practices and lack of, or maintenance of, best management practices (BMPs)), and pesticides. Other primarily localized impacts include coal mining, gravel mining, reduced water quality below dams, developmental activities, water withdrawal, impoundments, and alien species (*e.g.,* the zebra mussel, *Dreissena polymorpha*). Their restricted ranges and low population levels also increase their vulnerability to toxic chemical spills and the deleterious effects of genetic isolation.

The objective of this recovery plan is to provide a framework for the recovery of these five species so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the five species will be reviewed, and they will be considered for reclassification to threatened status or for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 5, 2003.

Noreen Walsh,

Acting Regional Director, Southeast Region, U.S. Fish and Wildlife Service.

Editorial Note: This document was received in the Office of the Federal Register on May 19, 2004.

[FR Doc. 04–11637 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Restoration Plan and Environmental Assessment for the Certus, Inc. Chemical Spill Natural Resource Damage Assessment in Lee County, VA

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI) and the Commonwealth of Virginia, announces the release for public review of the Draft Restoration Plan and Environmental Assessment (RP/EA) for the Certus, Inc. Chemical Spill Natural Resource Damage Assessment in Tazewell County, Virginia. The draft RP/EA describes the trustees' proposal to restore natural resources injured as a result of a release of hazardous substances.

DATES: Written comments must be submitted within 30 days from the date of publication of this notice.

ADDRESSES: Requests for copies of the draft RP/EA may be made to: U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061. Written comments or materials regarding the draft RP/EA should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804–693–6694, extension 107, for further information.

SUPPLEMENTARY INFORMATION: On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,350 gallons of Octocure 554-revised, a rubber accelerant, into an unnamed tributary about 530 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and caused a significant fish kill. The spill also killed most aquatic benthic invertebrates for about 7 miles downstream and destroyed one of the last two known remaining reproducing populations of the endangered tan riffleshell mussel. A consent decree was entered with the U.S. District Court for the Western District of Virginia, Abingdon Division, by the United States and Certus, Inc. on April 7, 2003, to address natural resource damages resulting from the 1998 release. The consent decree stipulates that settlement funds are to be "* * * managed by the DOI for the joint benefit and use of the Federal and State Trustees to plan, perform, monitor and oversee native, freshwater mussel restoration projects within the Clinch River watershed * * *."

Under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9601 *et seq.,* "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The natural resource damage assessment process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace, and/or acquire equivalent resources for those resources that were injured or lost.

This draft RP/EA has been developed by the Service in order to address and evaluate restoration alternatives related to natural resource injuries within the Clinch River watershed. The purpose of this RP/EA is to design and evaluate possible alternatives that will restore, rehabilitate, replace, or acquire natural resources, and the services provided by those resources, that approximate those injured as a result of the spill using funds collected as natural resource damages for injuries, pursuant to the CERCLA. This draft RP/EA describes the affected environment, identifies potential restoration alternatives and their plausible environmental consequences, and describes the proposed preferred alternative.

Section 111(i) of the CERCLA requires natural resource trustees to develop a restoration plan prior to allocating recoveries to implement restoration actions, and to obtain public comment on that plan. Under the National Environmental Policy Act (NEPA), Federal agencies must identify and evaluate environmental impacts that may result from Federal actions. This draft RP/EA integrates CERCLA and NEPA requirements by summarizing the affected environment, describing the purpose and need for action, and describing the restoration activities considered, including the alternative preferred by the Trustees.

This draft RP/EA will be available for review and comment by interested members of the public, natural resource Trustees, and other affected Federal or State agencies or Native American tribes, for a period of 30 days from the date of publication of this notice. Comments must be submitted in writing to: John Schmerfeld, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Comments, including names and home addresses of respondents, will be available for public review during regular business hours. Individual respondents may request confidentiality. If you wish us to withold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Interested members of the public are invited to review and comment on the draft RP/EA. Copies of the draft RP/EA are available for review at the Service's Virginia Field Office in Gloucester, Virginia, and at the Service's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210. Written comments will be considered and addressed in the final RP/EA.

Author: The primary author of this notice is John Schmerfeld, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), and DOI's Natural Resource Damage Assessment Regulations found at 43 CFR, part 11.

Dated: May 17, 2004.

Richard O. Bennett,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Designated Authorized Official.

[FR Doc. 04–11640 Filed 5–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: 2004 Census of State and Local Law Enforcement Agencies.

The Department of Justice (DOJ), Office of Justice Programs (OJP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 23, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brian A. Reaves, Bureau of Justice Statistics, 810 7th Street NW., room 2320, Washington, DC 20531, *brian.reaves@usdoj.gov* or facsimile (202) 307–5846.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* 2004 Census of State and Local Law Enforcement Agencies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* CJ–38, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. This information collection is a census of all state and local law enforcement agencies. The information will provide statistics on agency personnel, budgets, equipment and policies and procedures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 18,000 respondents will complete a one-half hour form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 9,000 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 19, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–11682 Filed 5–21–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP—Docket No. 1405]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board to review 2002–2003 activities and discuss the 2003–2004 Public Safety Officer Medal of Valor application process.

DATES: The meeting will take place on Monday, June 7, 2004, from 9 a.m. to 5 p.m. e.s.t.

ADDRESSES: The meeting will take place at the Ridgeland Police Department, 115 W. School Street, Ridgeland, Mississippi.

FOR FURTHER INFORMATION CONTACT: Omar A. Vargas, Advisor to the Assistant Attorney General, Office of Justice Programs, 810 7th Street, NW., Sixth Floor, Washington, DC 20531; Telephone: 202–307–5933 (**note:** this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This meeting will be open to the public and registrations will be accepted on a space available basis. Members of the public

who wish to attend the meeting must register at least five (5) days in advance of the meeting by contacting Mr. Vargas at the above address. Access to the meeting will not be allowed without prior registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should contact Mr. Vargas at least five (5) days in advance of the meeting.

Authority: The Public Safety Officer Medal of Valor Review Board is authorized to carry out its advisory function under 42 U.S.C. 15202. (42 U.S.C. 15201 authorizes the President to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.)

Dated: May 19, 2004.

Omar A. Vargas,

Advisory to the Assistant Attorney General, Office of Justice Programs.

[FR Doc. 04–11617 Filed 5–21–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Employee Benefit Plans: Notice to the Public Pursuant to Section 106 of the President's Reorganization Plan No. 4 of 1978

Pursuant to section 106 of the President's Reorganization Plan No. 4 of 1978, 43 FR 47713, October 17, 1978, 92 Stat. 3790, 5 U.S.C. app; 29 U.S.C. 1001 note, the Department of the Treasury is required to notify the Department of Labor of certain actions which it proposes to take under certain provisions of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 29 U.S.C. 1001 *et seq.* as amended (the Act).

On May 6, 2004, the Department of the Treasury notified the Department of Labor that the Department of the Treasury intends to publish a revenue procedure relating to the extension of the amortization period required to amortize any unfunded liabilities described in section 412(b)(2)(B) of the Internal Revenue Code (the Code) in accordance with section 412(e) of the Code. The revenue procedure would apply to, among other plans, collectively bargained plans.

Signed at Washington, DC, this 14th day of May, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–11618 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,685]

Amerex Corp.; Scotch Plains, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2004 in response to a worker petition filed by a state agency representative on behalf of workers at Amerex Corp., Scotch Plains, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 28th day of April 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–11620 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,669 and TA–W–54,669A]

American Meter Company Erie, PA and Calexico, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 23, 2004, applicable to workers of American Meter Company, Erie, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of natural gas meters and natural gas regulator components.

New findings show that worker separations occurred at the Calexico, California facility of the subject firm. Workers at the Calexico facility provided purchasing, warehouse scheduling and secretarial functions supporting the production of natural gas meters and natural gas regulator components at the Erie, Pennsylvania location of the subject firm.

Accordingly, the Department is amending the certification to cover workers at American Meter Company, Calexico, California.

The intent of the Department's certification is to include all workers of American Meter Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,669 is hereby issued as follows:

All workers of American Meter Company, Erie, Pennsylvania (TA–W–54,669) and American Meter Company, Calexico, California (TA–W–54,669A), who became totally or partially separated from employment on or after April 2, 2003, through April 23, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington DC, this 11th day of May 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–11621 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,717A]

Dystar LP, Corporate Office, Charlotte, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on December 12, 2003, applicable to workers of DyStar LP, Corporate Office, Charlotte, North Carolina. The notice was published in the **Federal Register** on January 26, 2004 (69 FR 3604).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide administrative support services for the production of textile reactive dyes produced by DyStar LP.

New findings show that a DyStar LP certification for worker adjustment

assistance (TA–W–39,329) was amended on January 15, 2002, to include the workers of DyStar LP, Corporate Office, Charlotte, North Carolina (TA–W–39,329A), who provided administrative support services for the production of textile reactive dyes. The notice of the amended certification was published in the **Federal Register** on February 5, 2002 (67 FR 5295). That amended certification expired on December 7, 2003.

To avoid an overlap in worker group coverage, the amended certification for TA–W–40,717A is again being amended to change the impact date from January 9, 2001, to December 8, 2003.

The amended notice applicable to TA–W–40,717A is hereby issued as follows:

All workers of DyStar LP, Corporate Office, Charlotte, North Carolina, who became totally or partially separated from employment on or after December 8, 2003, through May 6, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 5th day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–11628 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,221]

Greif Brothers Service Corporation Industrial Packaging and Service Division Kingsport, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Greif Brothers Service Corporation, Industrial Packaging and Service Division, Kingsport, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,221; Greif Brothers Service Corporation Industrial Packaging and Service Division Kingsport, Tennessee (May 7, 2004)

Signed at Washington, DC this 13th day of May 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–11623 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54 569]

Honeywell Aerospace, Inconel Team, a Division of the Engine Systems and Accessories Division, a Division of Honeywell, Tempe, AZ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 23, 2004, in response to a worker petition filed a state agency representative on behalf of workers at Honeywell Aerospace, Inconel Team, a division of the Engine Systems and Accessories Division, a division of Honeywell, Tempe, Arizona.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of April, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–11629 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54 086]

Loislaw.Com, Inc., Van Buren, AR; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked March 5, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Loislaw.com, Inc., Van Buren, Arkansas was signed on February 9, 2004, and published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Loislaw.com, Inc., Van Buren, Arkansas engaged in data entry by digitizing existing public records and making them accessible in an on-line database. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further described the functions performed by workers of the subject firm, which consist of editing, coding, quality control and building of the legal material to the internet and CD–ROM. The petitioner further states that edited material put on CD–ROM and the Internet for further consumption by the paying public is a commodity of convenience for the legal profession and should be considered a product.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that workers at the subject firm are engaged in publishing and collection of electronic and print legal and public records data, which is further digitized into a proprietary format. The official further clarified that only a small portion of the databases are distributed via CD–ROM, with the vast majority of the database customers receiving the edited and digitized data over the internet. According to the company official the burning process of the data on CD–ROM is performed at the subject facility in Van Buren, Arkansas.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Data collection, editing and coding are not considered production of an article within the meaning of section 222 of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974. Formatted electronic databases and codes are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. Although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of products that customs officials inspect and that the TAA program was generally designed to address.

The petitioner also alleges that imports caused layoffs, asserting that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import impacted.

The company official stated that for a number of years, Loislaw.com has utilized outside vendors to edit the material in India. However, the edited documents are returned to Loislaw.com to the Van Buren, Arkansas facility via electronic copies through the Internet for further control checks in order to be distributed to customers via the Internet or copied and distributed on CD-ROMs. Informational material that is electronically transmitted is not considered production within the context of TAA eligibility requirements, so there are no imports of products in this instance. Further, as the edited material does not become a product until it is recorded on media device, there was no shift in production of an ''article'' within the meaning of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–11624 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of March and April 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a)(2)(B)(II.B) (no shift in production to a foreign country) have not been met.

TA–W–54,448; Methode Electronics, Inc., Automotive Electronic Controls Div., Golden, IL

TA–W–53,924; National Carbide Die, McKeesport, PA

TA–W–54,326; Knowles Electronics LLC, Elgin, IL
TA–W–54,379; Carolina Rubber Rolls, Greenville, SC
TA–W–54,412; Scovill Fasteners, Inc., a div. of GSC Partners, Clarkesville, GA
TA–W–54,367; Holophane, Acuity Lighting Corp., Newark, OH
TA–W–54,265; Rainbow Displays, Inc., Endicott, NY
TA–W–54,305; Loger Industries, Lake City, PA
TA–W–54,271; Data Industrial Corp., a div. of Badger Meter, Inc., Mattapoisett, MA
TA–W–54,355; Falls Mold & Die, Inc., Stow, OH
TA–W–54,133; Peavey Electronics Plant 3, Meridian, MS
TA–W–53,962; Wagner Plastics, Inc., Clinton, MA
TA–W–54,459; Webster Industries, Inc., Dimension Plant, Banger, WI
TA–W–54,545; Control Tech, Inc., Hickory, NC
TA–W–54,370; Parker Hosiery, For Payne, AL
TA–W–54,372; Watts Regulator, Webster Valve Div., a subsidiary of Watts Water Technologies, Inc., including leased workers from Labor Ready, Manpower, Inc., and Central New Hampshire Employment Agency, Franklin, NH
TA–W–54,282; Unifrax Corp., Corporate Headquarters, Niagara Falls, NY, A; Tonawanda Manufacturing Facility, Tonawanda, NY, B; Amherst Manufacturing Facility, Amherst, NY, C; New Carlisle Indiana Manufacturing Facility, New Carlisle, IN
TA–W–54,446; MPI, Inc., Poughkeepsie, NY
TA–W–54,170; Hunter Corp., Portage, IN
TA–W–54,394; Magna Donnelly Corp., Holland Windows North, a subsidiary of Magna International, Inc., Holland, MI
TA–W–54,517; Tubafor Mill, Inc., Crane Creek Div., Amanda Park, WA
TA–W–54,118; Regal Plastics Co., including leased workers from JLI, Inc., Owosso, MI
TA–W–54,279; Rockbestos Surprenant Cable Corp., a div. of Marmon Wire and Cable Group, LLC, Clinton, MA
TA–W–54,349; Famillie Printing Co., Inc., Spartanburg, SC
TA–W–54,577; Jantek Industries, LLC, Medford, NJ
TA–W–54,409; Rouge Steel Co., Dearborn, MI
TA–W–54,139; A.D. Joslin Mfg. Company, a div. of Cosco Industries, Inc., Manistee, MI
TA–W–54,234; BASF Corp., Coatings Div., Morganton, NC
TA–W–54,200; Sanmina-SCI, Richardson, TX
TA–W–54,241; Siemens Dematic, Distribution and Industry Div., Grand Rapids, MI
TA–W–54,361; Kimberly Clark Corp., Kimtech Plant, Neenah, WI
TA–W–54,344; Screw Machine Specialties, Inc., Grand Haven, MI
TA–W–54,310; Intermet Havana Foundry, a div. of Intermet, Havana, IL
TA–W–54,385; TSS Dupont Holding, Inc., Providence, RI
TA–W–54,439; Sem-Pak Crop., T/A Meyer Packaging, including leased workers of Uni-Temp, Palmyra, PA
TA–W–54,469; St. John Knits, Inc., Van Nuys, CA
TA–W–54,438; Reichhold, Inc., Bridgeville, PA
TA–W–54,403; Missota Paper Co. LLC, Brainerd, MN
TA–W–54,371; Boston Gear, Div. of Colfax Corp., Louisburg, NC: Workers engaged in the assembly of speed reducers are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.
TA–W–54,151; Haworth, Inc., Comforto Div., including leased workers of Lincolnton Staffing and Kelly Services Lincolnton, NC: ''Workers of Haworth, Inc., Comforto Div., including leased workers of Lincolnton Staffing and Kelley Services, Lincolnton, NC, engaged in the assembly of office seating products are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–54,087; System Sensor ''El Paso Warehouse, a div. of Honeywell International, El Paso, TX
TA–W–54,316; Optoplast USA, Inc., Pittsburgh, PA
TA–W–54,447; ICT Group, Telemarketing, Bunham, PA

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–54,269; Accuride Corp., Henderson Operations, Henderson, KY
TA–W–54,474; Osram Sylvania, Inc., General Lighting Div., St. Marys, PA
TA–W–54,511; Wausau Papers of New Hampshire, Printing and Writing Group, a subsidiary of Wausau Masinee, Groveton, NH
TA–W–54,227; Glenshaw Glass Co., Glenshaw, PA
TA–W–54,351 & A; I/N Tek, a subsidiary of Ispat International NV and Nippon Steel, New Carlisle, IN and New Carlisle, IN
TA–W–54,274; The Boeing Company, Wichita Development and Modification Center, Integrated Defense Systems, Wichita, KS

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–54,479; SCA Packaging, f/k/a Tuscarora, Inc., Streator, IL

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

A–W–54,656; Eljer Plumbingware, Inc., Ford City, PA
TA–W–54,336; Resolite, a div. of Stabilit America, Inc., Zelienople, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–54,419; U.S. Forest Industries, Inc., Financial Office, Lisle, IL: March 3, 2003.
TA–W–54,461; Ramtex Sales Corp., a subsidiary of Ramtex, Inc., New York, NY: February 26, 2003.
TA–W–54,480; Ma's Manufacturing, Inc., San Francisco, CA: March 2, 2003.
TA–W–54,496; Kilgore Knitting, Inc., Fyffe, AL: March 11, 2003.
TA–W–54,334; Simonds International Corp., File Div., Newcomerstown, OH: February 13, 2003.
TA–W–54,313; Pinnacle Frames and Accents, Inc., Wood Div., formerly known as Tandycrafts, Inc., Piggott, AR: February 10, 2003.
TA–W–54,216; Keystone Consolidated Industries, Inc., Keystone Steel and Wire Div., Peoria, IL: February 4, 2003.
TA–W–54,541; IHI Turbo America, Shelbyville, IL: March 9, 2003.
TA–W–54,417; Repak, a div. of Prewett Hosiery Sales Corp., Fort Payne, AL: February 26, 2003.
TA–W–54,373; Eagle Tool Co., Dyersville, IA: February 25, 2003.
TA–W–54,134; Woodstock Percussion, Shokan, NY: January 20, 2003.

TA–W–54,285; ASARCO, Inc., Salt Lake City, UT: February 21, 2004.
TA–W–54,332; Springs Industries, Inc., Bedding Div., Lyman Finishing Plant, Lyman, SC: February 12, 2003.
TA–W–54,306; Crowntex, Inc., Wrightsville, GA: December 1, 2002.
TA–W–54,255; Imperial Schrade Corp., Ellenville, NY: February 2, 2003.
TA–W–54,244; Southland Hosiery Co., Thomasville, NC: February 4, 2003.
TA–W–54,415; MCS Industries, Somerset, NJ: March 2, 2003.
TA–W–54,314 & A; The Production Department, Confluence, PA and Gateway Sportswear Corp., a subsidiary of The Production Department, Confluence, PA: February 11, 2003.
TA–W–54,223; Ultra Tool/Grantsburg LLC, Grantsburg, WI: February 9, 2003.
TA–W–54,345; NED Corp., Worcester, MA: February 12, 2003.
TA–W–54,429; Decorize, Inc., Springfield, MO: March 3, 2003.
TA–W–54,428; VF Playwear, Greensboro, NC: March 3, 2003.
TA–W–54,339; Active Wear, Inc., Martinsville, VA: February 17, 2003.
TA–W–54,556; Paragon Glass Works, Inc., Lewiston, ME: March 18, 2003.
TA–W–54,399 & A; Western Geco Resources, Inc., Anchorage, AK and Deadhorse, AK: February 17, 2003.
TA–W–54,460; Ertex Knitting Co., Inc., Paterson, NJ: March 9, 2003.
TA–W–54,482; Umicore Optical Materials USA, Inc., Quapaw, OK: March 10, 2003.
TA–W–54,357; Solutia, Inc., Trenton, MI: January 26, 2003.
TA–W–54,360; Acme Packaging Corp., ITW Packaging Systems Div., New Britain, CT: February 23, 2003.
TA–W–54,528; Cerro Fabricated Products, Inc., Main Plant, a former div. of Cerro Metal Products, Brave, PA: March 16, 2003.
TA–W–54,405; Avondale Mills, Inc., Burnsville, NC: March 1, 2003.
TA–W–54,457; Protopac, Inc., Electronics Div., Watertown, CT: March 8, 2003.
TA–W–54,458; Rowe Pottery Works, Cambridge, WI: March 9, 2003.
TA–W–54,376; Lisbon Textile Prints, Inc., Lisbon, CT: February 5, 2003.
TA–W–54,384; Keeler Die Cast, Truth Hardware Div., including leased workers of RCM Technologies, Aerotek Commercial Staffing, Grand Rapids, MI: February 27, 2003.
TA–W–54,352; Presto Products Co., Weyauwega Facility, a div. of Alcoa Consumer Products, Weyauwega, WI: February 20, 2003.
TA–W–54,346; Meadwestvaco Corp., Forestry Div., Maine Region, Rumford, ME: February 9, 2003.
TA–W–54,539; Connor Carving & Turning Co., Inc., Thomasville, NC: March 17, 2003.
TA–W–54,583; Pasadena Paper Co., LP, Pasadena, TX: March 1, 2003.
TA–W–54,173; Lauri Toys, Inc., Avon, ME: January 26, 2003.
TA–W–54,302; Crescent, Inc., Niota, TN: January 23, 2003.
TA–W–54,503; Amesbury Group, Inc., Textile Div., Statesville, NC: February 24, 2003.
TA–W–54,325; S.K. Williams Co., including leased workers from Seek, Cornwall, Staffing, Inc., and Instant Help, Wauwatosa, WI: February 18, 2003.
TA–W–054,481; Sierra Pacific Industries, Susanville, CA: March 1, 2003.
TA–W–54,488; Fort Smith Rim & Bow Co., Fort Smith, AR: March 11, 2003.
TA–W–54,215 & A, B; Taylor Togs, Inc., Bakersville, NC, Taylorsville, NC and Micaville, NC: February 4, 2003.
TA–W–54,174; AEI Acquisitions, LLC., d/b/a Nexpak, Tucson, AZ: January 29, 2003.
TA–W–54,070 & A; Magruder Color Co., Inc., Bridgeview Div., Bridgeview, IL and Indol Carteret Div., Carteret, NJ: January 22, 2003.
TA–W–54,523; Camdett Corp., Camden, NJ: March 16, 2003.
TA–W–54,342; Aluminum Foundries, Inc., Winchester, IN: February 18, 2003.
TA–W–54,422; Golden Star, Inc., Atchison, KS: March 2, 2003.
TA–W–54,304; F.E. Wood and Sons, Inc., East Baldwin, ME: January 28, 2003.
TA–W–54,177; Amcast Industrial Corp., Richmond Indiana Plant, Richmond, IN: December 17, 2003.
TA–W–54,204; Missouri Steel Castings, including leased workers from Skillstaff, Employer Advantage and Moresource, Inc., Joplin, MO: February 5, 2003.
TA–W–54,433; Night Fashion, Inc., Los Angeles, CA: February 26, 2003.
TA–W–54,281; Chami Design, Inc., Tacoma, WA: February 12, 2003.
TA–W–54,295 & A, B, C; Sure Fit, Inc., (Marcon Blvd Facility), including leased workers of Centrix Human Resources, General Temp Labor, CK Hobbie, Inc., AA Staffing, People Unlimited, ITH Staffing, and HTSS, Allentown, PA, (Industrial Blvd Facility), Allentown, Boulder Drive Facility, Breingsville, PA and New York, NY: February 16, 2003.
TA–W–54,203 & A, B; Coats American, Inc., Watertown, CT, Bronx, NY and Charlotte, NC: February 3, 2003.
TA–W–54,165; Goodman Equipment Corp., Bedford Park, IL: February 3, 2003.
TA–W–54,242; Badger Paper Mills, Inc., Preshtigo, WI: February 9, 2003.
TA–W–54,531; Bose Corp., including leased workers of Manpower, Hillsdale, MI: April 17, 2004.
TA–W–54,667; Terra Nitrogen Corp., a subsidiary of Terra Industries, Inc., Blytheville, AR: April 2, 2003.
TA–W–54,497; Trek Bicycle Corp., including leased workers of Diversified Personnel Services, Whitewater, WI: March 11, 2003.
TA–W–54,037; Micaro Med Machining, d/b/a UTI Corp., Miramar, FL: January 12, 2003.
TA–W–54,388; Reeves International, Inc., Breyer Div., Wayne, NJ: February 27, 2003.
TA–W–54,109; Lakeshore Diversified Products, Spring Lake, MI: January 23, 2003.
TA–W–54,095; Kerr McGee Chemical, LLC, Electrolytic Div., Henderson, NE: January 12, 2003.
TA–W–54,062; Whitener Hosiery and Finishing Co., Inc., Hickory, NC: January 21, 2003.
TA–W–54,016; Doncasters, Inc., New England Airfoil Products Div., Farmington, CT: January 10, 2003.
TA–W–54,252; Central Coating and Assembly, Inc., a subsidiary of Hitachi Metals America, Mt. Pleasant, MI: February 10, 2003.
TA–W–54,049; Ingersoll-Rand/Blaw-Knox, Mattoon, IL: January 15, 2003.
TA–W–54,134; Woodstock Percussion, Shokan, NY: January 20, 2003.
TA–W–54,266; D.A. Stuart Co., Workers at National Steel, Great Lakes Operation, Ecorse, MI: February 5, 2003.
TA–W–54,371; Boston Gear, div. of Colfx Corp., Louisburg, NC: ''All workers engaged in the production of speed reducer components who became totally or partially separated from employment on or after February 20, 2003 are eligible to apply for adjustment assistance.''

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–54,513; Finch Fabricating and Plating, Inc., Thomasville, NC: March 9, 2003.
TA–W–54,363; Tru Mold Shoes, Inc., Buffalo, NY: February 20, 2003.
TA–W–54,397; Ludlow Fibc, a div. of Ludlow Coating Products, Opa Locka, FL: February 20, 2003.

TA–W–54,490; Parker-Hannifin Corp., CSD Commercial Div. including leased workers of Manpower, Ogden, UT: ''All workers engaged in the production of flight control actuators and components, who became totally or partially separated from employment on or after March 4, 2003.''
TA–W–54,510; San Francisco City Lights, Inc., San Francisco, CA: March 8, 2003.
TA–W–54,219; Morse Automotive, Shoe Assembly Department, Cartersville, GA: February 6, 2003.
TA–W–54,430; Bow Industrial Corp., Plattsburgh, NY: March 4, 2003.
TA–W–54,472; Alcatel USA Resources, Inc. Wireless Switching Div., Plano, TX: February 28, 2003.
TA–W–54,475; Dialight Corp., including leased workers of Penmac, Roxboro, NC: November 4, 2002.
TA–W–54,535; Tyco Electronics, Computer Communications and Consumer Electronics Div., Elcon Power Connector Products Group, Manufacturing Div., a subsidiary of Tyco International, Menlo Park, CA: January 4, 2003.
TA–W–54,504; SR Telecom, Redmond, WA: March 15, 2003.
TA–W–54,499; Federal Mogul Corporation, Ignition Products Div., Burlington, IA: March 5, 2003.
TA–W–54,246; Assurance Manufacturing, Inc., Formerly Known as Model Engineering, including leased workers from Atlas Staffing, Inc., Minneapolis, MN: February 11, 2003.
TA–W–54,286; Surratt Hosiery Mills, Inc., Denton, NC: March 12, 2003.
TA–W–54,211; Intercraft Co., Inc., a div. of Burnes Group, Taylor, TX: February 1, 2003.
TA–W–54,449; Bardy Corp., formerly Prinzing Enterprises, Inc., Including leased workers of Manpower International, Warrenville, IL: March 8, 2003.
TA–W–54,354; Arvesta Corp., Perry Div., Perry, OH: February 17, 2003.
TA–W–54,335; Fiber Industries, Inc., a subsidiary of Wellman, Inc., including leased workers of Pinnacle Staffing and BE&K, Charlotte, NC: February 10, 2003.
TA–W–54,538; Yorkshire Americas, Inc., Greensville, SC: March 17, 2003.
TA–W–54,615; PPG Industries, Inc., Automotive Glass Div., including leased workers of Affiliated Building Services, Berea, KY: March 23, 2003.
TA–W–54,348; Werner Co., Anniston, AL: February 18, 2003.
TA–W–54,390; Gul Technologies, Raleigh, NC: March 1, 2003.
TA–W–54,407; CFM U.S. Corp., Huntington, IN: March 2, 2003.
TA–W–54,420; Consolidated Fabricators, Inc., a subsidiary of Global Power Equipment Group, including leased workers of The Agentry and Express Personnel Services, Auburn, MA: February 23, 2003.
TA–W–54,493; Burle Industries, Inc., Lancaster, PA: March 9, 2003.
TA–W–54,573; TI Automotive Systems, Warren, MI: March 23, 2003.
TA–W–54,608; Medsource Technologies, Inc., Newton, MA: March 22, 2003, TA–W–54,671; Steelcase, Inc., New Paris, IN: April 5, 2003.
TA–W–54,567 & A; Artisans, Inc., Glen Flora, WI and Wausau, WI: March 19, 2003.
TA–W–54,423; Takata Restraint Systems, Inc., a wholly owned subsidiary of TK Holdings, Inc., Cheraw Plant, Cheraw, SC: March 2, 2003.
TA–W–54,324; National Lamination Co., Des Plaines, IL: February 13, 2003.
TA–W–54,364; Sandlapper Fabrics, Inc., Danbury, CT: February 25, 2003.
TA–W–54,543; Georgia Pacific, Consumer Products Div., Sandusky, OH: March 10, 2003.
TA–W–54,584; William M. Best Consulting Services, Workers at Gates Corp., Air Springs Div., Denver, CO: March 24, 2003.
TA–W–54,530; Quality Consulting and Inspection Services, Inc., Workers at Gates Corp., Air Springs Div., Denver, CO: March 15, 2003.
TA–W–54,404; Plains Cotton Cooperative Association, New Braunfels, TX: February 25, 2003.
TA–W–54,456; Tyco Electronics/Outside Plant, Protection Products Div., including leased workers of Manpower Temporary Services, Fuquay-Varina, NC: March 8, 2003.
TA–W–54,464; GL&V USA, Inc., Western Regional Div., a subsidiary of FL&V, Inc., Vancouver, WA: March 8, 2003.
TA–W–54,358; Aero-Motive Co., Kalamazoo, MI: February 17, 2003.
TA–W–54,492; Regal Manufacturing Co., Inc., Hickory, NC: March 8, 2003.
TA–W–54,276; Adams Business Forms, a div. of Cardinal Brands, Inc., Topeka, KS: February 13, 2003.
TA–W–54,201; Avent, Inc., Div. of Kimberly-Clark Corp., Haltom City, TX: February 2, 2003.
TA–W–54,315; Universal Stainless, Inc., a subsidiary of Leggett & Platt, Inc., including leased workers of Chase Staffing and Riviera Finance, Pineville, NC: February 10, 2003.
TA–W–54,454; J.J. Mae, Inc., d/b/a Rainbeau, San Francisco, CA: March 5, 2003.
TA–W–54,486; Pasminco Clinch Valley Mine, Thorn Hill, TN: March 11, 2003.
TA–W–54,380; Senior Operations, Inc., Senior Flexonics Pathway Div., Oak Ridge Site, Oak Ridge, TN: February 26, 2003.
TA–W–54,231; 411 Warehouse Corp., a subsidiary of Arnav Industries, Inc., Madisonville, TN: September 11, 2003.
TA–W–54,290; Rubbermaid Cleaning, a div. of Rubbermaid Commercial Products, a div. of Newell-Rubbermaid, including leased workers of Kelly Services and Action Staffing Group, Greenville, NC: February 16, 2003.
TA–W–54,443; Bloomsburg Mills, Inc., including leased workers of One Course Staffing Solutions, Bloomsburg, PA: March 22, 2004.
TA–W–54,450; Dekko Engineering, Lucas, IA: March 8, 2003.
TA–W–54,237; Steelcase, Inc., Wood Div., Fletcher, NC: February 6, 2003.
TA–W–54,127; Mid Atlantic of West Virginia, Ellenboro, WV: January 26, 2003.
TA–W–54,466; Worth, LLC, including leased workers of Staffing Solutions, Tullahoma, TN: February 19, 2003.
TA–W–54,233; Marko Products, Inc., d/b/a Marko Foam Products, Inc., Corona Div., including leased workers of Adecco, Remedy, Manpower and Corestaff, Corona, CA, A; Hayward Div., Hayward, CA and B; Machining Div., Corona, CA: January 28, 2003.
TA–W–54,284; Pechiney Plastic Packaging, Inc., Cebal America's Div., Washington, NJ: February 5, 2003.
TA–W–54,178; Drexel Heritage Furniture Industries, Plant 2, Marion, NC: January 30, 2003.
TA–W–54,250; Valeo, Inc., Transmission Div., Hampton, VA: January 30, 2003.
TA–W–54,288; Hedstrom Corp., Ball, Bounce and Sport Div., Plant #1, Ashland, OH: February 10, 2003.
TA–W–54,362; Bose Corp., Blythewood, SC: February 24, 2003.
TA–W–54,138; Wentworth Corp., d/b/a Liberty Textiles, Eden, NC: December 5, 2002.
TA–W–54,340; IMI Norgren, Inc., Littleton Div., 73,74 Cost Center, Littleton, CO: February 19, 2003.
TA–W–54,209; Waterloo Industries, Inc., Muskogee, Oklahoma Div., including leased workers of Quality Staffing, Muskogee, OK: February 4, 2003.
TA–W–54,136; El Financiero International, Inc., Los Angeles, CA: January 22, 2003.

TA–W–54,224; Consolidated Ventura Telephones, Tucson, AZ: February 6, 2003.
TA–W–54,437; Parker Seal, Engineered Seals Div., Lebanon, TN: February 23, 2003.
TA–W–54,426; Littelfuse, Inc., Powr-Gard Div., including leased workers of Innovative Staff Solutions, Arcola, IL: February 27, 2003.
TA–W–54,500; Jakel, Inc., Highland, IL: March 12, 2003.
TA–W–54,529; Federal Mogul Corp., Bearings-St.Johns Div., St. Johns, MI: March 15, 2003.
TA–W–54,190; ISA Breeders, Inc., d/b/a ISA Babcock/Babcock, Office and Hatchery, Ithaca, NY, A; Farm 2, Trumansburg, NY, B; Farm 4, Ithaca, NY, C; Farm 5, Ithaca, NY, D; Maintenance Delivery and Farm 7, Ithaca, NY, E; Poultry Health Lab, Ithaca, NY: February 4, 2003.
TA–W–54,259; Leviton Manufacturing, lighting Control Div., Tualtin, OR: February 2, 2003.
TA–W–54,151; Haworth, Inc., Comforto Div., including leased workers of Lincolnton Staffing and Kelley Services, Lincolnton, NC, engaged in the production of office seating components who became totally or partially separated from employment on or after January 29, 2003.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–54,494; Jones and Vining, Inc., Lewiston, ME: March 10, 2003.
TA–W–54,498; North Manchester Foundry, North Manchester, IN: February 23, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (A*TAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.*

In the following cases, it has been determined that the requirements of section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–54,266; D.A. Stuart Co., workers at National Steel, Great Lakes Operation, Ecorse, MI
TA–W–54,259; Leviton Manufacturing, Lighting Control Div., Tualtin, OR:

The Department as determined that criterion (3) of section 246 has not been met. The competitive conditions within the workers' industry is adverse.

TA–W–54,134; Woodstock Percussion, Shokan, NY
TA–W–54,190; ISA Breeders, Inc., d/b/a ISA Babcock/Babcock, Office and Hatchery, Ithaca, NY, A; Farm 2, Trumansburg, NY, B; Farm 4, Ithaca, NY, C; Farm 5, Ithaca, NY, D; Maintenance, Delivery and Farm 7, Ithaca, NY and E; Poultry Health Lab, Ithaca, NY

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–53,498; North Manchester Foundry, North Manchester, In.
TA–W–54,049; Ingersoll-Rand/Blaw-Knox, Mattoon, IL
TA–W–54,252; Central Coating and Assembly, Inc., a subsidiary of Hitachi Metals America, Mt. Pleasant, MI
TA–W–54,016; Doncasters, Inc., New England Airfoil Products Div., Farmington, CT
TA–W–54,062; Whitener Hosiery and Finishing Co., Inc., Hickory, NC
TA–W–54,095; Kerr McGee Chemical, LLC, Electrolytic Division, Henderson, NV
TA–W–54,109; Lakeshore Diversified Products, Spring Lake, MI
TA–W–54,388; Reeves International, Inc., Breyer Division, Wayne, NJ
TA–W–54,037; Micro Med Machining, d/b/a UTI Corp., Miramar, FL
TA–W–54,497; Trek Bicycle Corp., including leased workers of Diversified Personnel Services, Whitewater, WI
TA–W–54,667; Terra Nitrogen Corp., a subsidiary of Terra Industries, Inc., Blytheville, AR
TA–W–54,531; Bose Corp., including leased workers of Manpower, Hillsdale, MI
TA–W–54,242; Badger Paper Mills, Inc., Preshtigo, WI
TA–W–54,500; Jakel, Inc., Highland, IL
TA–W–54,529; Federal Mogul Corp., Bearings-St.Johns Div., St. Johns, MI
TA–W–54,426; Littelfuse, Inc., Powr-gard Div., including leased workers of Innovative Staff Solutions, Arcola, IL
TA–W–54,437; Parker Seal, Engineered Seals Div., Lebanon, TN
TA–W–54,224; Consolidated Ventura Telephones, Tucson, AZ
TA–W–54,136; El Financiero International, Inc., Los Angeles, CA
TA–W–54,209; Waterloo Industries, Inc., Muskogee, Oklahoma Div., including leased workers of Quality Staffing, Muskogee, OK
TA–W–54,340; IMI Norgren, Inc., Littleton Div., 73, 74 Cost Center, Littleton, CO
TA–W–54,138; Wentworth Corp., d/b/a Liberty Textiles, Eden, NC
TA–W–54,362; Bose Corp., Blythewood, SC
TA–W–54,288; Hedstrom Corp., Ball, Bounce and Sport Div., Plant #1, Ashland, OH
TA–W–54,250; Valeo, Inc., Transmission Div., Hampton, VA
TA–W–54,178; Drexel Heritage Furniture Industries, Plant 2, Marion, NC
TA–W–54,284; Pechiney Plastic Packaging, Inc., Cebal America's Div., Washington, NJ
TA–W–54,233; Marko Products, Inc., d/b/a Marko Foam Products, Inc., Corona Div., including leased workers of Adecco, Remedy, Manpower and Corestaff, Corona, CA, A; Hayward Div., Hayward, CA and B; Machining Div., Corona, CA
TA–W–54,466; Worth, LLC, including leased workers of Staffing Solutions, Tullahoma, TN

Since the workers are denied eligibility to apply for ATAA, the workers cannot be certified eligible for ATAA.

TA–W–54,394; Magna Donnelly Corp., Holland Windows North, a subsidiary of Magna International, Inc., Holland, MI
TA–W–54,446; MPI, Inc., Poughkeepsie, NY
TA–W–54,517; Tubafor Mill, Inc., Crane Creek Div., Amanda Park, WA
TA–W–54,170; Hunter Corp., Portage, IN
TA–W–54,118; Regal Plastics Co., including leased workers from JLI, Inc., Owosso, MI
TA–W–54,279; Rockbestos Surprenant Cable Corp., a div. of Marmon Wire and Cable Group, LLC, Clinton, MA
TA–W–54,479; SCA Packaging, f/k/a Tuscarora, Inc., Streator, IL
TA–W–54,349; Famillie Printing Co., Inc., Spartanburg, SC
TA–W–54,577; Jantek Industries, LLC, Medford, NJ
TA–W–54,409; Rouge Steel Co., Dearborn, MI
TA–W–54,139; A.D. Joslin Mfg, Company, a div. of Cosco Industries, Inc., Manistee, MI
TA–W–54,234; BASF Corp., Coatings Div., Morganton, NC
TA–W–54,227; Glenshaw Glass Co., Glenshaw, PA
TA–W–54,200; Sanmina-SCI, Richardson, TX
TA–W–54,351 & A; I/N Tek, a subsidiary of Ispat International NV and Nippon Steel and New Carlisle, IN
TA–W–54,274; The Boeing Co., Wichita Development and Modification

Center, Integrated Defense Systems, Wichita, KS
TA–W–54,241; Siemens Dematic, Distribution and Industry Div., Grand Rapids, MI
TA–W–54,361; Kimberly Clark Corp., Kimtech Plant, Neenah, WI
TA–W–54,344; Screw Machine Specialties, Inc., Grand Haven, MI
TA–W–54,310; Intermet Havana Foundry, a div. of Intermet, Havana, IL
TA–W–54,385; TSS Dupont Holding, Inc., Providence, RI
TA–W–54,439; Sem-Pak Corp., T/A Meyer Packaging, including leased workers of Uni-Temp, Palmyra, PA
TA–W–54,469; St. John Knits, Inc., Van Nuys, CA
TA–W–54,438; Reichhold, Inc., Bridgeville, PA
TA–W–54,403; Missota Paper Co., LLC, Brainerd, MN
TA–W–54,336; Resolite, a div. of Stabilit America, Inc., Zelienople, PA
TA–W–54,151; Haworth, Inc., Comforto Div., including leased workers of Lincolnton Staffing and Kelly Services, Lincolnton, NC: All workers engaged in the assembly of office seating products are denied alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–54,538; Yorkshire Americas, Inc., Greensville, SC: March 17, 2003.
TA–W–54,615; PPG Industries, Inc., Automotive Glass Div. including leased workers of Affiliated Building Services, Berea, KY: March 23, 2003.
TA–W–54,429; Decorize, Inc., Springfield, MO: March 3, 2003.
TA–W–54,348; Werner Co., Anniston, AL: February 18, 2003.
TA–W–54,390; Gul Technologies, Raleigh, NC: March 1, 2003.
TA–W–54,407; CFM U.S. Corp., Huntington, IN: March 2, 2003.
TA–W–54,420; Consolidated Fabricators, Inc., a subsidiary of Global Power Equipment Group, including leased workers of The Agentry and Express Personnel Services, Auburn, MA: February 23, 2003.
TA–W–54,428; VF Playwear, Greensboro, NC: March 3, 2003.
TA–W–54,493; Burle Industries, Inc., Lancaster, PA: March 9, 2003.
TA–W–54,339; Active Wear, Inc., Martinsville, VA: February 17, 2003.
TA–W–54,556; Paragon Glass Works, Inc., Lewiston, ME: March 18, 2003.
TA–W–54,573; TI Automotive Systems, Warren, MI: March 23, 2003.
TA–W–54,399 & A; Western Geco Resources, Inc., Anchorage, AK and Deadhorse, AK: February 17, 2003.
TA–W–54,460; Ertex Knitting Co., Inc., Paterson, NJ: March 9, 2003.
TA–W–54,482; Umicore Optical Materials USA, Inc., Quapaw, OK: March 10, 2003.
TA–W–54,357; Solutia, Inc., Trenton, MI: January 26, 2003.
TA–W–54,360; Acme Packaging Corp., ITW Packaging Systems Div., New Britain, CT: February 23, 2003.
TA–W–54,528; Cerro Fabricated Products, Inc., Main Plant, a former div. of Cerro Metal Products, Brave, PA: March 16, 2003.
TA–W–54,608; Medsource Technologies, Inc., Newton Div., Newton, MA: March 22, 2003.
TA–W–54,671; Steelcase, Inc., New Paris, IN: April 5, 2003.
TA–W–54,405; Avondale Mills, Inc., Burnsville, NC: March 1, 2003.
TA–W–54,457; Protopac, Inc., Electronics Div., Watertown, CT: March 8, 2003.
TA–W–54,458; Rowe Pottery Works, Cambridge, WI: March 9, 2003.
TA–W–54,567 & A; Artisans, Inc., Glen Flora, WI and Wausau, WI: March 19, 2003.
TA–W–54,423; Takata Restraint Systems, Inc., a wholly owned subsidiary of TK Holdings, Inc., Cheraw Plant, Cheraw, SC: March 2, 2003.
TA–W–54,376; Lisbon Textile Prints, Inc., Lisbon, CT: February 5, 2003.
TA–W–54,384; Keeler Die Cast, Truth Hardware Div., including leased workers of RCM Technologies, Aerotek Commercial Staffing, Grand Rapids, MI: February 27, 2003.
TA–W–54,324; National Lamination Co., Des Plaines, IL: February 13, 2003.
TA–W–54,346; Meadwestvaco Corp., Forestry Div., Maine Region, Rumford, ME: February 9, 2003.
TA–W–54,352; Presto Products Co., Weyauwega Facility, a div. of Alcoa Consumer Products, Weyauwega, WI: February 20, 2003.
TA–W–54,364; Sandlapper Fabrics, Inc., Danbury, CT: February 25, 2003.
TA–W–54,539; Connor Carving and Turning Co., Inc., Thomasville, NC: March 17, 2003.
TA–W–54,543; Georgia Pacific, Consumer Products Div., Sandusky, OH: March 10j, 2003.
TA–W–54,583; Pasadena Paper Co., LP, Pasadena, TX: March 1, 2003.
TA–W–54,584; William M. Best Consulting Services, Workers at Gates Corp., Air Springs Div., Denver, CO: March 24, 2003.
TA–W–54,173; Lauri Toys, Inc., Avon, ME: January 26, 2003.
TA–W–54,302; Crescent, Inc., Niota, TN: January 23, 2003.
TA–W–54,530; Quality Consulting and Inspection Services, Inc., Workers at Gates Corp., Air Springs Div., Denver, CO: March 15, 2003.
TA–W–54,503; Amesbury Group, Inc., Textile Div., Statesville, NC: February 24, 2003.
TA–W–54,325; S.K. Williams Co, including leased workers from Seek, Cornwall, Staffing, Inc., and Instant Help, Wauwatosa, WI: February 18, 2003.
TA–W–54,404; Plains Cotton Cooperative Association, New Braunfels, TX: February 25, 2003.
TA–W–54,464; Western Region Div., a subsidiary of GL&V, Inc., Vancouver, WA: March 8, 2003.
TA–W–54,481; Sierra Pacific Industries, Susanville, CA: March 1, 2003.
TA–W–54,488; Fort Smith Rim & Bow Co., Fort Smith, AR: March 11, 2003.
TA–W–54,492; Regal Manufacturing Co., Inc., Hickory, NC: March 8, 2003.
TA–W–54,276; Adams Business Forms, a div. of Cardinal Brands, Inc., Topeka, KS: February 13, 2003.
TA–W–54,201; Avent, Inc., div. of Kimberly-Clark Corp., Holtom City, TX: February 2, 2003.
TA–W–54,315; Universal Stainless, Inc., a subsidiary of Leggett & Platt, Inc., including leased workers of Chase Staffing and Rivera Finance, Pineville, NC: February 10, 2003.
TA–W–54,358; Aero-Motive Co., Kalamazoo, MI: February 17, 2003.

TA–W–54,215 & A, B; Taylor Togs, Inc., Bakersville, NC, Taylorsville, NC, Micaville, NC: February 4, 2003.
TA–W–54,174; AEI Acquisitions, LLC, d/b/a Nexpak, Tucson, AZ: January 29, 2003.
TA–W–54,070 & A; Magruder Color Co., Inc., Bridgeview Div., Bridgeview, IL and Indol Carteret Div., Carteret, NJ: January 22, 2003.
TA–W–54,454; J.J. Mae, Inc., d/b/a Rainbeau, San Francisco, CA: March 5, 2003.
TA–W–54,486; Pasminco Clinch Valley Mine, Thorn Hill, TN: March 11, 2003.
TA–W–54,523; Camdett Corp., Camden, NJ: March 16, 2003.
TA–W–54,342; Aluminum Foundries, Inc., Winchester, IN: February 18, 2003.
TA–W–54,380; Senior Operations, Inc., Senior Flexonics Pathway Div., Oak Ridge Site, Oak Ridge, TN: February 26, 2003.
TA–W–54,422; Golden Star, Inc., Atchison, KS: March 2, 2003.
TA–W–54,231; 411, Warehouse Corp., a subsidiary of Arnav Industries, Inc., Madisonville, TN: September 11, 2003.
TA–W–54,304; F.E. Wood and Sons, Inc., East Baldwin, ME: January 28, 2003.
TA–W–54,290; Rubbermaid Cleaning, a div. of Rubbermaid Commercial Products, a div. of Newell-Rubbermaid, including leased workers of Kelly Services and Action Staffing Group, Greenville, NC: February 16, 2003.
TA–W–54,177; Amcast Industrial Corp., Richmond Indiana Plant, Richmond, IN: December 17, 2002.
TA–W–54,204; Missouri Steel Castings, including leased workers from Skillstaff, Employer Advantage and Moresource, Inc., Joplin, Missouri: February 5, 2003.
TA–W–54,433; Night Fashion, Inc., Los Angles, CA: February 26, 2003.
TA–W–54,443; Bloomsburg Mills, Inc., including leased workers of One Course Staffing Solutions, Bloomsburg, PA: March 22, 2004.
TA–W–54,450; Dekko Engineering, Lucas, IA: March 8, 2003.
TA–W–54,281; Chami Design, Inc., Tacoma, WA: February 12, 2003.
TA–W–54,295 & A, B, C; Sure Fit, Inc., (Marcon Blvd Facility), including leased workers of Centric Human Resources, General Temp Labor, CK Hobbie, Inc., AA Staffing, People Unlimited, ITH Staffing, and HTSS, Allentown, PA, (Industrial Blvd Facility), Allentown, PA, (Boulder Drive Facility), Breingsville, PA and New York, NY: February 26, 2003.
TA–W–54,237; Steelcase, Inc., Wood Div., Fletcher, NC: February 6, 2003.
TA–W–54,203 & A, B; Coats American, Inc., Watertown, CT, Bronx, NY and Corporate Headquarters, Charlotte, NC: February 3, 2003.
TA–W–54,127; Mid Atlantic of West Virginia, Ellenboro, WV: January 26, 2003.
TA–W–54,165; Goodman Equipment Corp., Bedford Park, IL: February 3, 2003.
TA–W–54,151; Haworth, Inc., Comforto Div., including leased workers of Lincolnton Staffing and Kelley Services, Lincolnton, NC, engaged in the production of office seating components who became totally or partially separated from employment on or after January 29, 2003.

I hereby certify that the aforementioned determinations were issued during the months of March and April 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 12, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–11622 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,798]

Mohican Mills, Inc., Lincolnton, NC; Negative Determination on Reconsideration

On April 16, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's notice was published in the **Federal Register** on April 30, 2004 (69 FR 23818).

The Department initially denied Trade Adjustment Assistance (TAA) to workers of Mohican Mills, Inc., Lincolnton, North Carolina because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974 was not met. The subject worker group produces textiles, primarily warp knit products, and workers are not separately identifiable by product line. During the relevant period, the company did not import or shift production abroad. A survey of the company's major declining customers revealed insignificant amounts of warp knit fabric imports during the relevant time period. Aggregate data showed decreased imports during the relevant time.

The petitioner alleges in the request for reconsideration that lace is not the same as warp knit fabrics and that workers who make lace produces are separately identifiable from workers who make other types of warp knit fabric. The petitioner requests that the negative determination not be applied to lace producers and that the Department address only lace products in the new investigation. The petitioner also alleges that that increased imports of raw lace material has negatively impacted domestic lace production.

In the reconsideration investigation, the Department contacted the company and was informed that lace is a type of warp knit fabric and that lace production constitutes a small percentage of production (about five percent). The company also confirmed that the workers are not separately identifiable by product line. A new customer survey of lace product imports was not conducted because the initial survey of warp knit fabric was appropriate.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Mohican Mills, Inc., Lincolnton, North Carolina.

Signed at Washington, DC, this 7th day May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance, Assistance.

[FR Doc. 04–11627 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,939]

Tippins, Inc., Pittsburgh, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 15, 2004, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for

Trade Adjustment Assistance (TAA). The denial notice was signed on February 12, 2004 and published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Tippins, Inc., Pittsburgh, Pennsylvania engaged in the refurbishing of steel and aluminum rolling mill machinery was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's domestic customers. The Department conducted a survey of domestic entities to which the subject firm submitted bids in 2001, 2002, and 2003. The survey revealed that none of these companies awarded contracts to foreign sources during the relevant period. The subject firm did not increase its reliance on imports during the relevant period, nor did they shift production to a foreign source.

The petitioner alleges that in recent years all of Tippins' competitors became foreign firms and thus, any jobs Tippins lost should be considered as a loss to foreign competition.

Upon the initial investigation, the subject firm provided a list of lost bids during the relevant time period. As established in the initial investigation, the majority of these bids were for contracts on work to be done abroad. The loss of such bids could not therefore be attributed to imports and is irrelevant in this investigation. The subject firm also provided a major lost bid with a domestic contractor. It was revealed upon the contact with this entity, that the contract was awarded to another domestic firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–11626 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,081]

The Toro Company, Oxford, MS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at The Toro Company, Oxford, Mississippi. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,081; The Toro Company Oxford, Mississippi (May 7, 2004)

Signed at Washington, DC, this 13th day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–11625 Filed 5–21–04; 8:45 am]

BILLING CODE 4510–30–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49719; File No. SR–Amex–2004–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Funds of the Vanguard Stock Index Funds

May 17, 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 February 25, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (the ''Amex filing'') as described in Items I and II below, which Items have been prepared by the Exchange. On April 22, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade under Amex Rules 1000A *et seq.* a class of shares, known as VIPER Shares, of certain index funds that are series of the Vanguard World Funds. The funds seek to track the following indices compiled by Morgan Stanley Capital International Inc. (MSCI®)(''MSCI'')[4]: the MSCI U.S. Investable Market Energy Index, the MSCI U.S. Investable Market Industrials Index and the MSCI U.S. Investable Market Telecommunications Services Index.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex Rules 1000A *et seq.* provide standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for exchange trading. These securities are registered under the Investment Company Act of 1940 (''1940 Act'') as well as the Act. Index Fund Shares are defined in Amex Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to

[1] 15 U.S.C 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* letter from Marija Willen, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 21, 2004 (''Amendment No. 1''). Amendment No. 1 replaces the original filing in its entirety.

[4] ''MSCI®'' is a service mark of Morgan Stanley & Co. Incorporated.

provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

The Exchange proposes to list and trade under Amex Rules 1000A *et seq.* the following three securities issued by funds (each a ''Vanguard Index Fund'' or ''Fund'') that would be separate investment portfolios of the Vanguard World Funds (''Trust''): [5]

(a) Vanguard Energy VIPERs, a share class of Vanguard Energy Index Fund, which would seek to track the Morgan Stanley Capital International (MSCI®) (''MSCI'') U.S. Investable Market Energy Index;

(b) Vanguard Industrials VIPERs, a share class of Vanguard Industrials Index Fund, which would seek to track the MSCI U.S. Investable Market Industrials Index; and

(c) Vanguard Telecommunications Services VIPERs, a share class of Vanguard Telecommunications Services Index Fund, which would seek to track the MSCI U.S. Investable Market Telecommunications Services Index.

For descriptions of the underlying indices for the Funds, *see* ''Target Indices—Key Characteristics,'' below as well as Exhibits A to C to the Amex filing, which are available at the principal office of the Amex and at the Commission. Exhibits A to C include index descriptions, component selection criteria, index maintenance and issue changes, top components of each index, and portfolio composition and characteristics. The index on which a particular Fund would be based is referred to as a ''Target Index,'' and the securities included in such index are referred to as ''Component Securities.'' The Vanguard Group, Inc. (''Adviser'' or ''Vanguard'') would be the investment adviser to each Fund.[6] The Adviser would be registered under the Investment Advisers Act of 1940.

While the Adviser would manage each Fund, the Trust's Board of Trustees (''Board'') would have overall responsibility for the Funds'' operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the 1940 Act. Pursuant to Rule 10A–3 of the Act,[7] and Section 3 of the Sarbanes-Oxley Act of 2002,[8] the Exchange will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.[9]

Vanguard Marketing Corporation (''Distributor''), a wholly-owned subsidiary of Vanguard and a broker-dealer registered under the Act, would be the principal underwriter and distributor of VIPER Shares of the Funds.

According to the Amex, Vanguard Index Participation Equity Receipts, or ''VIPER'' shares (''VIPER Shares''), are a class of exchange-traded securities that represent an interest in the portfolio of stocks held by a particular Fund. In addition to VIPER Shares, the Funds would offer classes of shares that are not exchange-traded, which are referred to as ''Conventional Shares.'' [10]

VIPER Shares would be registered in book-entry form only and the Funds would not issue individual share certificates. The Depository Trust Company (''DTC'') or its nominee would be the record or registered owner of all outstanding VIPER Shares. Beneficial ownership of VIPER Shares would be shown on the records of the DTC or DTC Participants.

Target Indices and Investment Objectives. As noted in the Application, each Fund seeks to track, as closely as possible, the performance of its Target Index and it is expected that, in the future, the Funds would have a tracking error of less than five percentage points per annum.[11] When practicable, the Funds would use the replication method of indexing—in which each stock found in the Target Index would be held in about the same proportion as represented in the index itself—as their primary strategy. However, according to the Amex, the Advisor has represented that the Funds would sample their Target Indices—by holding stocks that, in the aggregate, would be intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield ''—regulatory constraints or other considerations were to prevent them from replicating the indices. In particular, because the Funds would not at present be able to replicate their Target Indices and still comply with Internal Revenue Code (''IRC'') diversification standards applicable to regulated investment companies, the Funds would use sampling to modify their exposure to certain stocks in order to maintain compliance with IRC diversification standards.[12]

According to the Amex, the Application states that each Fund will invest at least 90% of its assets in the component securities of its respective Target Index.[13]

[5] The Trust has other funds that issue VIPER Shares. According to the Amex, those issues of VIPER Shares met the requirements of Amex Rule 1000A, Commentary .02, for listing pursuant to Rule 19b–4(e) of the Act.

[6] The Commission granted Vanguard's Application for an Order under Sections 6(c) and 17(b) of the 1940 Act, for the purpose of exempting the Funds referenced herein and other related entities from various provisions of the 1940 Act and rules thereunder (File No. 812–12912) (''Application'') in an order dated December 30, 2003 (Release No. IC–26317) (''Exemptive Order''). A summary of the Application appears in Release No. IC–26282 (December 2, 2003), 68 FR 68430 (December 8, 2003). The December 30, 2003 order amends a prior order granted by the Commission in December 2000 to Vanguard Index Funds, *et al.* See Release Nos. IC–24680 (October 6, 2000), 65 FR 61005 (October 13, 2000) (notice); and IC–24789 (December 12, 2000), 65 FR 79439 (December 19, 2000) (order) (File No. 812–12094). Information in this filing regarding the Funds is based on material in the Application and in the Funds' registration statement.

[7] 17 CFR 240.10A–3.

[8] *See* Section 3 of Pub. L. 107–204, 116 Stat. 745 (2002).

[9] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ann E. Leddy, Special Counsel, Division, Commission, on May 17, 2004.

[10] As described in the Application, the Vanguard Index Funds' organizational documents would permit the Vanguard Index Funds to issue shares of different classes. Each of the Funds also would offer one class of Conventional Shares, known as Admiral Shares.

[11] According to the Amex, the prospectuses for the Funds disclose that each Fund would reserve the right to substitute a different index for the Target Index the Fund currently tracks. Substitution would be able to occur if the current index were to be discontinued, the Fund's license with the sponsor of the current index were to be terminated, or for any other reason determined in good faith by the Board. In every such instance, the substitute index would measure the same general market as the current index. Fund shareholders would be notified in the event that a Fund's current index were to be replaced and investors holding their shares through a broker or other intermediary would receive the notification from their intermediary.

[12] In order for a Fund to qualify for tax treatment as a regulated investment company, it would have to meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851 (b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

[13] According to the Amex, to the extent that a Fund were to invest in instruments other than common stocks included in its Target Index, it would invest no more than 10% of its assets in those other instruments. Such instruments could include stock and index futures, options on stocks and futures, convertible securities, swap agreements, cash investments, forward foreign currency investments, foreign currency exchange contracts, shares of other investment companies (within the limits permitted by Section 12(d)(1) of the 1940 Act), stocks about to be added to the Target Index, and any other instrument not inconsistent with the Fund's investment policies as

According to the Amex, the Funds have been advised by MSCI that on or before the first day of trading of each Fund, the value of its Target Index would be updated intra-day as individual Component Securities change in price. These intra-day values of the Target Indices are and would be disseminated at regular intervals (every 15 seconds) throughout the trading day by organizations authorized by MSCI. In addition, these organizations would disseminate values for each Target Index once each trading day, based on closing prices in the relevant exchange market.

According to the Amex, the daily closing index value and the percentage change in the daily closing index value for the Target Indices are publicly available on the MSCI Web site at *http://www.msci.com.* Data—including weights, index shares, closing prices and corporate actions—regarding each Target Index is available to MSCI subscribers through various methods of delivery. MSCI index data may be delivered to subscribers directly from MSCI on a daily or monthly basis via electronic delivery methods. MSCI subscribers also may receive index data on a monthly or quarterly basis in print format via express mail. Several independent data vendors package and disseminate MSCI data in various value-added formats (including vendors displaying both securities and index levels, such as FAME, FactSet, Datastream and RIMES, and vendors displaying index levels only, such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters and Telekurs).

Target Indices—Key Characteristics. General. The Target Indices would be subsets of the MSCI U.S. Investable Market 2500 Index, which represents the investable universe of companies in the U.S. equity market. The MSCI U.S. Investable Market 2500 Index is a free float adjusted market capitalization weighted index that targets for inclusion 2,500 companies and represents, as of June 30, 2003, approximately 98% of the capitalization of the U.S. equity market. The U.S. Equity Market consists of U.S. domiciled companies traded on the New York Stock Exchange, Inc. (''NYSE''), Amex, Nasdaq National Market System (''Nasdaq'') or Nasdaq Small Cap Market. The subsets are created by grouping the constituents into their respective Global Industry Classification Standard (GICS®) industry sector code.

described in detail in its registration statement, which the Adviser believes would help the Fund to track the performance of its Target Index.

According to the Amex, the Target Indices would meet all of the eligibility requirements for index components set out in Amex Rule 1000A and in particular, those requirements of Amex Rule 1000A, Commentary .02, with the exception of the weighting standards set out in (a)(3) of that commentary, and the VIPER Funds therefore would not be eligible for approval for listing and trading pursuant to Rule 19b–4(e) under the Act.[14] As further described below, a significant portion of the weight of all three of these indices would be accounted for by stocks with substantial market capitalization and trading volume, which, together with the other characteristics of the indices and the Funds, would ensure that a minimum level of liquidity would exist for each VIPER Fund, reducing the potential for manipulation of the indices' component securities and allowing for the maintenance of fair and orderly markets.

MSCI U.S. Investable Market Energy Index. The MSCI U.S. Investable Market Energy Index represents the Energy companies of the MSCI U.S. Investable Market 2500 Index as classified in accordance with the Global Industry Classification Standard (GICS®). The MSCI U.S. Investable Market Energy Index is a free float adjusted market capitalization weighted index. As of December 31, 2003, the index contained 113 constituents with a total market capitalization of $698,253,890,350. Each of the individual components of the index had a market capitalization over $75,000,000 with an average market capitalization of $6,234,409,735. All constituents had a monthly trading volume during each of the last six months of at least 250,000 shares. The five highest weighted stocks—which represent 65.04% of index weight—had an average daily dollar volume in excess of $50,000,000 during the past two months. Additional detail on the MSCI U.S. Investable Market Energy Index can be found in Exhibit A to the Amex filing, which is available at the principal office of the Amex and at the Commission.

MSCI U.S. Investable Market Industrials Index. The MSCI U.S. Investable Market Industrials Index represents the Industrial companies of the MSCI U.S. Investable Market 2500 Index as classified in accordance with the Global Industry Classification Standard (GICS®). The MSCI U.S. Investable Market Industrials Index is a free float adjusted market capitalization weighted index. As of December 31, 2003, the index contained 314 constituents with a total market capitalization of $1,259,470,832,295. Each of the individual components of the index had a market capitalization over $75,000,000 with an average market capitalization of $4,011,053,606. Approximately 99.68% of the weight of the index is represented by the constituents that had a monthly trading volume during each of the last six months of at least 250,000 shares. The five highest weighted stocks—which represent 40.53% of index weight—had an average daily dollar volume in excess of $150,000,000 during the past two months. Additional detail on the MSCI U.S. Investable Market Industrials Services Index can be found in Exhibit B to the Amex filing, which is available at the principal office of the Amex and at the Commission.

MSCI U.S. Investable Market Telecommunications Services Index. The MSCI U.S. Investable Market Telecommunications Services Index represents the Telecommunications Service companies of the MSCI U.S. Investable Market 2500 Index as classified in accordance with the Global Industry Classification Standard (GICS®). The MSCI U.S. Investable Market Telecommunications Services Index is a free float adjusted market capitalization weighted index. As of December 31, 2003, the index contained 41 constituents with a total market capitalization of $367,750,455,980. Each of the individual components of the index had a market capitalization over $75,000,000 with an average market capitalization of $8,969,523,317. Approximately 99.95% of weight of the index is represented by the constituents that had a monthly trading volume during each of the last six months of at least 250,000 shares. The five highest weighted stocks—which represent 76.33% of index weight—had an average daily dollar volume in excess of $130,000,000 during the past two months. Additional detail on the MSCI U.S. Investable Market Telecommunications Services Index can be found in Exhibit C to the Amex filing, which is available at the principal office of the Amex and at the Commission.

Availability of Information about VIPER Shares. Vanguard's Web site, which is and will be publicly accessible at no charge, would contain the following information for each Fund's

[14] According to the Amex, the MSCI U.S. Investable Market Industrials Index at this time meets all of the standards of Amex Rule 1000A, Commentary .02. It is included in this filing because, based on the time required for preparation for listing, it is possible that the index may not satisfy the standard relating to the most heavily weighted stock component on the date of listing (the heavily weighted component stock in the index currently constitutes approximately 26% of the index).

VIPER Shares: (a) The prior business day's closing net asset value (''NAV''), the mid-point of the bid-asked spread at the time that the Fund's NAV is calculated (''Bid-Asked Price''),[15] and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; (c) its Prospectus and two most recent reports to shareholders; and (d) other quantitative information such as daily trading volume. The Product Description for each Fund would inform investors that the Adviser's Web site has information about the premiums and discounts at which the Fund's VIPER Shares have traded.[16]

The Amex would disseminate for each Fund on a daily basis by means of Consolidated Tape Association (''CTA'') and CQ High Speed Lines information with respect to the Intraday Indicative Value (as defined and discussed below under ''Dissemination of Intraday Indicative Value''), recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit. The Exchange would make available on its Web site daily trading volume, closing price, the NAV and final dividend amounts to be paid for each Fund. The closing prices of the Deposit Securities (as defined below) are readily available from, as applicable, exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Beneficial owners of VIPER Shares (''Beneficial Owners'') would receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They would receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents would be provided to Beneficial Owners by their brokers, while others would be provided by the Fund through the brokers.

Creation and Redemption of VIPER Shares. Each Fund would issue and redeem VIPER Shares only in aggregations of 100,000 (''Creation Units'').[17] Purchasers of Creation Units would be able to separate the Units into individual VIPER Shares. The number of VIPER Shares in a Creation Unit would not change except in the event of a stock split or similar revaluation. According to the Amex, the initial value of a VIPER Share for each of the three Funds is expected to be $50.

Creation. Persons purchasing Creation Units from a Fund would be required to make an in-kind deposit of a basket of securities (''Deposit Securities'') consisting of stocks selected by the Adviser from among the stocks contained in the issuing fund's portfolio, together with an amount of cash specified by the Adviser (''Balancing Amount''), plus the applicable transaction fee (''Transaction Fee''). The Deposit Securities and the Balancing Amount collectively would be referred to as the ''Creation Deposit.'' The Balancing Amount would be a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit it is used to purchase. The Balancing Amount would be an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[18] The Transaction Fee would be a fee imposed by the Funds on investors purchasing (or redeeming—see ''Redemption'' below) Creation Units. The purpose of the Transaction Fee would be to protect the existing shareholders of the Funds from the dilutive effect of the transaction costs (primarily custodial costs) that the Funds incur when investors purchase (or redeem) Creation Units.[19]

The Adviser would make available through the DTC or the Distributor on each business day, prior to the opening of trading on the Exchange, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund.[20] The Adviser also would make available on a daily basis information about the previous day's Balancing Amount.

The Adviser currently contemplates that Creation Units would be created principally in kind, but the Funds reserve the option to permit or require the substitution of an amount of cash—*i.e.,* a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, may not be eligible for transfer, or may not be eligible for trading by an Authorized Participant (as defined below) or the investor for which an Authorized Participant is acting.[21] Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit would be expected to be immaterial, and in any event the Adviser represents that it would adjust the relevant Transaction Fee to ensure that the Fund collects the extra expense from the purchaser.

Orders to create or redeem VIPER Shares would be required to be placed through an Authorized Participant, which would be either (1) a broker-dealer or other participant in the continuous net settlement system of the

[15] According to the Application, because the NAV for all share classes of all Vanguard funds is calculated as of the close of the NYSE (usually 4 pm), but the market for VIPER Shares and other ETFs does not close until 4:15 pm, the closing market price is not measured at the same time as NAV. This difference in timing could lead to discrepancies between performance based on NAV and performance based on market price that give investors an inaccurate picture of the correlation between the two figures. To remedy this problem, the Funds compare performance of a Fund's VIPER Shares based on NAV to performance of the VIPER Shares based on the mid-point of the bid-asked spread at the time NAV is calculated. By calculating market-based and NAV-based performance at the same time, the two performance figures will be comparable, and any differences will be attributable to market forces rather than timing differences.

[16] *See* ''Prospectus Delivery'' below regarding the Product Description. The Exemptive Order granted relief from Section 24(d) of the 1940 Act, which relief permits dealers to sell VIPER Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933.

[17] The Funds would offer all current and future holders of Conventional Shares, except those holding Conventional Shares through a 401(k) or other participant-directed employer-sponsored retirement plan, the opportunity to convert such shares into VIPER shares of equivalent value (''Conversion Privilege''). The Conversion Privilege would be a ''one-way'' transaction only. Holders of Conventional Shares would be able to convert those shares into VIPER shares, but Beneficial Owners of VIPER Shares would not be permitted to convert those shares into Conventional Shares.

[18] If the market value of the Deposit Securities were to be greater than the NAV of a Creation Unit, then the Balancing Amount would be a negative number, in which case the Balancing Amount would be paid by the Fund to the purchaser, rather than vice-versa.

[19] If a Fund were to permit a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser would be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

[20] In accordance with Vanguard's Code of Ethics and Insider Trading Policy, personnel of the Adviser with knowledge about the composition of a Creation Deposit would be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

[21] According to the Application, in certain instances, a Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Adviser might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases. The registration statement states that the Funds have no current intention of issuing Creation Units for cash.

National Securities Clearing Corporation or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.

As noted above, on each business day, each Fund would make available a list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount effective as of the previous business day. As noted below in ''Dissemination of Intraday Indicative Value,'' the Exchange would disseminate through the facilities of the CTA, at regular intervals (currently anticipated to be 15 second intervals) during the Exchange's regular trading hours, the Intraday Indicative Value on a per VIPER Share basis. The Funds would not be involved in, or responsible for, the calculation or dissemination of any such amount and would make no warranty as to its accuracy.

Redemption. VIPER Shares in Creation Unit-size aggregations would be redeemable on any day on which the NYSE is open in exchange for a basket of securities (''Redemption Securities''). As it does for Deposit Securities, the Adviser would make available to Authorized Participants on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases would be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.[22] Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit would either receive from or pay to the Fund a cash amount equal to the difference. (In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount would be equal to the Balancing Amount described above in the creation process.) The redeeming investor also would be required to pay to the Fund a Transaction Fee to cover transaction costs.[23]

A Fund would have the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the VIPER Shares tendered for redemption.[24] The Adviser currently contemplates that Creation Units of each Fund would be redeemed principally in kind, except in certain circumstances. A Fund would be able to make redemptions partly or wholly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor if the Fund determines, in its discretion, that such alternative is warranted due to unusual circumstances. This could happen if the redeeming investor is unable, by law or policy, to own a particular Redemption Security. The Adviser represents that it would adjust the Transaction Fee imposed on a redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

Dividends. Dividends from net investment income would be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Capital gains distributions, if any, would generally occur in December.

The final dividend amount for the VIPER Shares of each Fund, which would be made available on *http://www.amextrader.com,* would be the amount of dividends to be paid by a Fund to holders of its VIPER Shares for the appropriate period (usually annually). The final dividend amount would also be disseminated by the Funds to Bloomberg and other sources.

According to the Amex, the Funds intend to make available to Beneficial Owners of VIPER Shares the DTC book-entry dividend reinvestment service. Without this service, Beneficial Owners would have to take their distributions in cash. Information about the dividend reinvestment service would appear in each Fund's prospectus and in its Product Description.[25]

The cash proceeds of dividends and capital gain distributions payable to all Beneficial Owners participating in DTC's reinvestment service would be used to purchase additional VIPER Shares for such Beneficial Owners. These additional shares would be purchased on the secondary market. Some DTC Participants would be able to elect not to utilize the dividend reinvestment service. Beneficial Owners who hold VIPER Shares through these DTC Participants may not be able to reinvest their dividends and distributions. These Beneficial Owners would receive their dividends and distributions in cash. The prospectus for VIPER Shares and the Product Description would disclose this fact.

Criteria for Initial and Continued Listing. Shares would be subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. A minimum of 100,000 VIPER Shares would be required to be outstanding for each Fund at the start of trading. This minimum number of Shares required to be outstanding at the start of trading would be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The initial price of a VIPER Share for each Fund would be approximately $50 per share.

The Exchange believes that the proposed minimum number of VIPER Shares outstanding at the start of trading is sufficient to provide market liquidity.

Original and Annual Listing Fees. The Amex original listing fee applicable to the listing of the Index Fund Shares would be $5,000 for each Fund. In addition, the annual listing fee applicable to the VIPER Funds under Section 141 of the Amex Company Guide (''Company Guide'') would be based upon the year-end aggregate number of outstanding VIPER Shares in all Vanguard funds listed on the Exchange.

Stop and Stop Limit Orders. Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Index Fund

[22] There may be circumstances, however, where the Deposit and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund's Target Index at the close of today's trading session, today's prescribed Deposit Securities might include ABC but not XYZ, while today's prescribed Redemption Securities might include XYZ but not ABC. According to the Application, having the flexibility to prescribe different baskets for creation and redemption promotes efficient portfolio management and lowers the Fund's brokerage costs, and thus is in the best interests of the Fund's shareholders.

[23] Redemptions in which cash is substituted for one or more Redemption Securities would be assessed an appropriate Transaction Fee to offset the transaction cost to the fund of selling those particular Redemption Securities. *See supra* note .

[24] In the event an Authorized Participant has submitted a redemption request in good order and is unable to transfer all or part of a Creation Unit-size aggregation for redemption, a Fund would nonetheless be able to accept the redemption request in reliance on the Authorized Participant's undertaking to deliver the missing VIPER Shares as soon as possible, which undertaking shall be secured by the Authorized Participant's delivery and maintenance of collateral. The Authorized Participant Agreement would permit the Fund to buy the missing VIPER Shares at any time and would subject the Authorized Participant to liability for any shortfall between the cost to the Fund of purchasing the VIPER Shares and the value of the collateral.

[25] *See supra* note 16, and below, ''Prospectus Delivery.''

Shares, including VIPER Shares, as eligible for this treatment.[26]

Amex Rule 190. Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including VIPER Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery. The Exchange, in an Information Circular to Exchange members and member organizations, would inform members and member organizations, prior to commencement of trading, of the prospectus and Product Description delivery requirements that apply to the Funds. The Exemptive Order granted relief from Section 24(d) of the 1940 Act, which relief permits dealers to sell VIPER Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Any Product Description used in reliance on the Section 24(d) exemptive order would comply with all representations made therein and all conditions thereto.

Trading Halts. In addition to other factors that may be relevant, the Exchange would be able to consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including VIPER Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[27] In addition, trading in VIPER Shares would be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability. Prior to commencement of trading, the Exchange would issue an Information Circular informing members and member organizations of the characteristics of the Funds' VIPER Shares and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

Purchases and Redemptions in Creation Unit Size. In the Information Circular referenced above, members and member organizations would be informed that procedures for purchases and redemptions of VIPER Shares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that VIPER Shares would not be individually redeemable but would be redeemable only in Creation Unit size aggregations or multiples thereof.

Surveillance. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the VIPER Shares. Specifically, the Amex would rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Act. In addition, the Exchange and MSCI also have a general policy prohibiting the distribution of material, non-public information by its employees. Because MSCI is a broker-dealer that maintains the Target Indices, it is imperative that a functional separation exist, such as a firewall between the trading desk of the broker-dealer and the research persons responsible for maintaining the Target Indices. MSCI has represented that such a firewall exists.

Hours of Trading/Minimum Price Variation. The Funds would trade on the Exchange until 4:15 pm (New York time) each business day. Shares of each fund would trade with a minimum price variation of $.01.

Dissemination of Intraday Indicative Value. In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem VIPER Shares, as noted above, the Exchange would disseminate through the facilities of the CTA: (i) continuously throughout the trading day, through the facilities of the consolidated tape, the market value of a VIPER Share,[28] and (ii) every 15 seconds throughout the trading day, separately from the consolidated tape, a calculation of the estimated NAV (also known as the Intraday Indicative Value or ''IIV'') [29] of a VIPER Share as calculated by a third party calculator (''IIV Calculator'') (that is currently expected to be the Amex). Comparing these two figures would help an investor to determine whether, and to what extent, VIPER Shares may be selling at a premium or a discount to NAV.

The IIV Calculator would calculate the IIV of a VIPER Share as follows: First, it would establish the market value of a Creation Deposit based on the previous night's closing price of each Deposit Security plus the previous night's Balancing Amount. Then, throughout the day at 15-second intervals, it would recalculate the market value of a Creation Deposit based on the then-current market price of each Deposit Security plus the previous night's Balancing Amount.

The IIV may not reflect the value of all securities included in the applicable Target Index. In addition, the IIV would not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IIV on a per VIPER Share basis disseminated during Amex trading hours should not be viewed as a real time update of the net asset value of a particular Fund, which would be calculated only once a day. The IIV that would be disseminated by the Amex at the start of the trading day is expected to be generally close to the most recently calculated Fund net asset value on a per VIPER Share basis. It is possible that the value of the portfolio of securities held by a Fund may diverge from the value of the Deposit Securities during any trading day. If there were to be such a divergence, the IIV would not precisely reflect the value of the Fund portfolio. However, during the trading day, the IIV of a Fund's VIPER Shares would be expected to closely approximate the value per VIPER Share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Adviser).

The Exchange believes that dissemination of the IIV based on the Deposit Securities would provide additional information regarding each Fund that would not otherwise be available to the public and would be useful to professionals and investors in connection with VIPER Shares trading on the Exchange or the creation or redemption of VIPER Shares. The IIV would also include the applicable estimated cash component for each Fund.

[26] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR–Amex–90–31), regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[27] *See* Amex Rule 918C.

[28] The consolidated tape would show the market price of VIPER Shares only; it would not show the price (*i.e.*, the NAV) of Conventional Shares.

[29] The Application refers to the IIV as the ''estimated NAV.'' The IIV is also referred to by other issuers as an ''Underlying Trading Value,'' ''Indicative Optimized Portfolio Value (IOPV),'' and ''Intraday Value'' in various places such as the prospectus and marketing materials for different exchange-traded funds.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act,[30] in general, and furthers the objectives of Section 6(b)(5),[31] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–Amex–2004–16 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–Amex–2004–16. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2004–16 and should be submitted on or before June 14, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [33] and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.[34]

The Commission believes that the new VIPER Shares will provide investors with an additional investment choice. The Commission believes that the Amex's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell single securities at negotiated prices throughout the business day that generally track the price and yield performance of the respective underlying Target Indices.[35]

Furthermore, the proposed rule change raises no issues that have not been previously considered by the Commission in connection with earlier filings for Index Fund Shares pursuant to Rule 19b–4 under the Act.[36] The VIPER Shares to be issued by the Vanguard Index Funds are similar in structure and operation to exchange-traded index fund shares that the Commission has previously approved for listing and trading on national exchanges under Section 19(b)(2) of the Act.[37] In particular, with respect to each of the following key issues, the Commission believes that the VIPER Shares satisfy established standards.

A. Fund Characteristics

Similar to other previously-approved, exchange-listed index fund shares, the Commission believes that the proposed VIPER Shares will provide investors with an alternative to trading a broad range of securities on an individual basis and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable Target Index. The estimated cost of individual VIPER Shares, approximately $50, should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, unlike the case with standard open-end investment companies specializing in such stocks, investors will be able to trade each of the VIPER Shares continuously throughout the business day in secondary market transactions at negotiated prices.[38] Accordingly, the proposed Funds will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors;

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[35] The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in VIPER Shares can redeem in Creation Unit size aggregations only. *See, e.g.,* Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR–Amex–2001–45) (''Release No. 34–44990''). This citation was corrected by Securities Exchange Act Release No. 44990 (November 5, 2001), 66 FR 56869 (November 13, 2001) (SR–Amex–2001–45).

[36] 17 CFR 240.19b–4.

[37] 15 U.S.C. 78s(b)(2).

[38] Because of the potential arbitrage opportunities, the Commission believes that VIPER Shares will not trade at a material discount or premium in relation to their NAV.

and (3) reduce transaction costs for trading a portfolio of securities.

The Commission believes that each of the proposed Funds is reasonably designed to provide investors with an investment vehicle that substantially reflects in value the applicable Target Index and, in turn, the performance of: (1) The component securities comprising the MSCI U.S. Investable Market Energy Index; (2) the component securities comprising the MSCI U.S. Investable Market Industrials Index; and (3) the MSCI U.S. Investable Market Telecommunications Services Index.

The Commission notes that the MSCI U.S. Investable Market Energy Index and the MSCI U.S. Investable Market Telecommunications Services Index do not meet the weighting standards set out in Amex Rule 1000A, Commentary .02(a)(3), which require that the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The Commission notes further that, although the MSCI U.S. Investable Market Industrials Index currently meets the requirements of Amex Rule 1000A, Commentary .02, it is possible that the index may not satisfy the standard relating to the most heavily weighted stock component on the date of listing (the heavily weighted component stock in the index currently constitutes approximately 26% of the index). The Commission notes, however, that a significant portion of the weight of each of the three Target Indices is accounted for by stocks with substantial market capitalization and trading volume. Together with the other characteristics of the Target Indices and the Funds, the Commission believes that a minimum level of liquidity would exist for each VIPER Fund, reducing the potential for manipulation of the Target Indices' component securities and allowing for the maintenance of fair and orderly markets.

Moreover, the Commission finds that, although the value of the VIPER Shares will be derived from and based on the value of the securities and cash held in the Fund, VIPER Shares are not leveraged instruments. Accordingly, the level of risk involved in the purchase or sale of VIPER Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the VIPER Shares is based on a portfolio of securities. The Commission notes that each Fund will invest at least 90% of its assets in the component securities of its respective Target Index. As noted above, each Fund will use a replication method of indexing to attempt to track its Target Index. It is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of less than five percentage points per annum. The Advisers to each Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, options, convertible securities, swaps and currency exchange contracts; however, these instruments will not constitute more than 10 percent of the Funds' assets.

While the Commission believes that the above characteristics of the Target Indices make it unlikely that the Funds could become highly concentrated with illiquid stocks, susceptible to manipulation, in the event that the Funds' characteristics change significantly from that described herein, the Commission would expect the Amex to contact Commission staff to file a proposed rule change pursuant to Rule 19b–4 of the Act. Accordingly, the level of risk involved in the purchase or sale of VIPER Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the VIPER Shares is based on a portfolio of securities.

B. Disclosure

The Commission believes that the Amex's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Funds. The Exchange will circulate an Information Circular detailing applicable prospectus and product description delivery requirements. Because the VIPER Shares have been granted relief from the prospectus delivery requirements of the 1940 Act, they will be subject to Amex Rule 1000A, which requires delivery of a product description describing the Funds. Pursuant to the rule, the delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. In addition, Rule 1000A requires that a member or member organization must deliver a prospectus to a customer upon request.

The circular also will address members' responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of the Funds. For example, the information circular will also inform members and member organizations that VIPER Shares are not individually redeemable, but are redeemable only in Creation-Unit-size aggregations as set forth in each Fund prospectus and statement of additional information. The circular will also advise members of their obligations pursuant to Amex Rule 411 (Duty to Know and Approve Customer).

C. Dissemination of Fund Information

With respect to pricing, the Exchange will disseminate the recent NAV for each Fund on the Exchange Web site.[39] As indicated above, each Fund's NAV will be calculated once daily as of 4 p.m. Amex will also disseminate by means of the CTA and CQ High Speed Lines each Fund's IIV at 15-second intervals and the market value of its VIPER Shares. The Commission believes that comparing these two figures will help an investor to determine whether, and to what extent, VIPER Shares may be selling at a premium or a discount to NAV.

Amex will also make available additional information about each Fund, including shares outstanding, daily trading volume, closing price, estimated cash amount and total cash amount per Creation Unit, and final dividend amounts to be paid for each Fund.[40] The Commission believes that dissemination of this information will facilitate transparency with respect to the proposed VIPER Shares and diminish the risk of manipulation or unfair informational advantage.

In addition, the Commission notes that Vanguard's Web site is and will be publicly accessible at no charge, and will contain each fund's NAV as of the prior business day, the Bid-Asked Price, and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV. Additional information available to investors will include data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; the Fund's Prospectus and two most recent reports to shareholders;

[39] The Exchange will post additional information about each fund, including dividend amounts to be paid as well.

[40] The Commission believes that the closing prices of Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

and other quantitative information such as daily trading volume.[41]

Based on the representations made in the Amex proposal, the Commission believes that pricing and other important information about each Fund is adequate.

D. Listing and Trading

The Commission finds that adequate rules and procedures exist to govern the listing and trading of VIPER Shares. VIPER Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing trading halts, responsibilities of the specialist, account opening and customer suitability requirements, and the election of stop and stop limit orders.

In addition, the Funds will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex.[42] As the Commission has noted previously,[43] the listing and delisting criteria for VIPER Shares should help to ensure that a minimum level of liquidity will exist in each of the Funds to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of VIPER Shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, a minimum of 100,000 VIPER Shares will be required to be outstanding for each Fund at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.[44]

E. Surveillance

The Commission finds that Amex has adequate surveillance procedures to monitor the trading of the proposed VIPER Shares, including concerns with specialists purchasing and redeeming Creation Units. The Amex represents that it will rely on existing surveillance procedures governing Index Fund Shares, and in addition, that the exchange and MSCI prohibit the distribution of material, non-public information by their employees that could undermine a fair and orderly market. In addition, the Exchange and MSCI also have a general policy prohibiting the distribution of material, non-public information by their employees. Because MSCI is a broker-dealer that maintains the Target Indices, it is imperative that a functional separation exist, such as a firewall between the trading desk of the broker-dealer and the research persons responsible for maintaining the Target Indices. MSCI has represented that such a firewall exists.

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[45] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposed rule change is consistent with the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares), and the Commission has previously approved similar products.[46] The Commission does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[47] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (SR–Amex–2004–16), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[49]

Jill M. Peterson,

Assistant Secretary.

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[41] *See supra* ''Availability of Information about VIPER Shares.''

[42] *See* Amex Rule 1002A.

[43] *See, e.g.,* Release No. 34–44990, *supra* note 35.

[44] This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

[45] 15 U.S.C. 78s(b)(2).

[46] *See, e.g.,* Release No. 34–44990, *supra* note 35.

[47] 15 U.S.C. 78s(b)(5).

[48] *Id.*

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49722; File No. SR–Amex–2004–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to a Reduction in ETF Transaction Fees for Specialists and Registered Options Traders

May 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 30, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On May 13, 2004, the Amex filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, has been filed by the Amex as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce transaction fees for specialists and registered options traders (''ROTs'') in connection with transactions in exchange-traded fund shares (''ETFs''). The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 12, 2004 (''Amendment No. 1''). Amendment No. 1 corrects a typographical error in the proposed rule language.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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 Amex 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 Amex proposes to reduce transactions charges imposed on specialists and ROTs in connection with Exchange transactions in ETFs. For purposes of the Exchange's fee schedule, ETFs include portfolio depositary receipts, index fund shares and trust issued receipts. The Exchange's current ETF transaction charges for specialists and ROTs are set forth in the following table:

I.—TRANSACTION CHARGES FOR ETFS WITHOUT UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	$0.0055 ($.55 per 100 shares)	$0.0060 ($.60 per 100 shares).
Subject to the following per trade maximums:	$300 (54,545 shares)	$300 (50,000 shares).

II.—TRANSACTION CHARGES FOR ETFS FOR WHICH THE EXCHANGE PAYS UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	$0.0059 ($.59 per 100 shares)	$0.0062 ($.62 per 100 shares).
Subject to the following per trade maximums:	$300 (50,847 shares)	$300 (48,387 shares).

Transaction charges for specialists are capped at $700,000 per month per specialist unit.

* * * * *

The proposed fee reductions are set forth below in the revised ETF transaction fee schedule:

I.—PROPOSED TRANSACTION CHARGES FOR ETFS WITHOUT UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	$0.0044 ($.44 per 100 shares).	$0.0048 ($.48 per 100 shares).
Subject to the following per trade maximums:	$300 (68,181 shares)	$300 (62,500 shares).

II.—PROPOSED TRANSACTION CHARGES FOR ETFS FOR WHICH THE EXCHANGE PAYS UNREIMBURSED FEES TO A THIRD PARTY

	Specialists	Registered traders
Per Share Side	$0.0048 ($.48 per 100 shares).	$0.0050 ($.50 per 100 shares).
Subject to the following per trade maximums:	$300 (62,500 shares)	$300 (60,000 shares).

Proposed transaction charges for specialists are capped at $500,000 per month per specialist unit.

* * * * *

The Exchange submits that the proposal would be effective on May 1, 2004 and constitutes a 20% reduction (both specialists and ROTs) for ETF transaction charges without reimbursed fees to third parties and an 18.64% reduction for specialists and a 19.35% reduction for ROTs for ETF transaction charges for which the Exchange pays unreimbursed fees to a third party.

The Exchange believes that a reduction in ETF transaction fees is warranted in order to provide greater incentives for specialists and ROTs to competitively quote their markets and attract additional order flow. In addition, the Exchange also believes that the reduction would help to maintain existing floor operations of member firms at the Amex.

2. Statutory Basis

The Exchange believes that the proposed fee change, as amended, is consistent with Section 6(b)(4) of the Act[6] regarding the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of 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, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

change, as amended, 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.

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–Amex–2004–29 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–Amex–2004–29. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2004–29 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11654 Filed 5–21–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49723; File No. SR–CBOE–2004–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Remove From the Exchange Rules References to Certain Indexes and Trading Permits

May 18, 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 May 10, 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 CBOE. Pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] CBOE has designated this proposal as non-controversial, which renders the proposed rule change effective upon filing with the Commission. 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 remove from its rules references to ''Options Trading Permits'' and ''IPC Permits'' as these permits are no longer valid on the Exchange. The Exchange also proposes to remove from its rules references to the ''IPC Index.'' In addition, the Exchange is making a housekeeping change to Appendix A of Chapters XLVII to XLIX. The text of the proposed rule change is available at CBOE and at the Commission.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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 Exchange is removing from its membership rules references to certain permits that granted the holders of the permits certain trading rights on the Exchange. Specifically, the Exchange is proposing to remove from its rules references to ''IPC Permits'' and related references and ''Options Trading Permits'' as these permits either are no longer valid on the Exchange or have since expired pursuant to their terms.

The Exchange represents that it previously entered into a license agreement with Bolsa Mexicana de Valores (''Bolsa'') pursuant to which Bolsa licensed the Exchange to trade options on the Indice de Precios y Cotizaciones (''IPC''). CBOE states that in consideration for the grant of this license, it agreed to issue IPC permits to Bolsa members to trade options on the IPC and amended its membership rules to provide for the issuance of IPC permits that granted to the holder of an IPC permit limited trading rights. CBOE represents that since it never issued any IPC permits and because IPC Index options are no longer listed on the Exchange, the Exchange is removing all references in its rules relating to the IPC Index and IPC permits.

In addition, the Exchange states that in 1997, it entered into an agreement (the ''NYSE Agreement'') with the New York Stock Exchange, Inc. (''NYSE'') whereby the NYSE transferred its options business to the Exchange. The Exchange states that in connection with the transfer of NYSE's options business, it made available to the individuals who had traded options on the NYSE a certain number of Options Trading Permits (''OTPs''), whose rights and obligations are set forth in Rule 3.27, ''Options Trading Permits''. On April 27, 2004, in accordance with the terms of the NYSE Agreement, the OTPs

expired. Holders of OTPs who wished to continue trading on the Exchange needed to either purchase or lease a CBOE membership or obtain CBOE membership trading rights through the exercise of a full Chicago Board of Trade membership. The Exchange represents that it is removing rule text relating to OTPs because all OTPs have expired.

The Exchange is also making a housekeeping change to Appendix A of Chapters XLVII to XLIX of the Exchange rules (''Appendix'') to update the Appendix as a result of the removal of Rules 3.26 and 3.27 from the Exchange rules and certain other rule changes to the Exchange rules that are not reflected in the Appendix.

2. Statutory Basis

The proposed rule change removes from Exchange rules certain provisions that are no longer applicable and makes a nonsubstantive housekeeping change to certain other provisions and therefore, the Exchange believes, is consistent with Section 6(b) of the Act [5] in general and furthers the objectives of Section 6(b)(5) of the Act [6] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6)[8] thereunder because the proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Number SR–CBOE–2004–26 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–2004–26. 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 Room. 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–2004–26 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11646 Filed 5–21–04; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] As required under Rule 19b–4(f)(6)(iii), CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49721; File No. SR–CHX–2004–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Co-Specialist Assignments and Evaluations

May 18, 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 February 3, 2004 the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CHX. On May 12, 2004, the Commission received Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CHX proposes to amend Interpretations .01 and .02 to Article

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 11, 2004 (''Amendment No. 1''). Amendment No. 1 superseded and replaced the original rule filing in its entirety.

XXX, Rule 1 of the CHX Rules and to add a new Interpretation .04. These new and revised provisions would govern the assignment of securities to co-specialists and the evaluation of co-specialist trading activity. The text of the proposed rule change is set forth below. New text is *italicized.* Deletions are in brackets. In addition, the Exchange proposes changes to its floor member questionnaire. A copy of the proposed new questionnaire is available from the Office of the Secretary of the Commission or the CHX.

* * * * *

Chicago Stock Exchange Rules

ARTICLE XXX

Specialists

Rule 1. No change to text.

* * * Interpretations and Policies

.01 [Committee on Specialist Assignment & Evaluation]

Committee on Specialist Assignment and Evaluation

Assignment Function

I. Events Leading to Assignment Proceedings

1–6. No change to text.

7. Unsatisfactory Performance Action.

(a) The Committee shall periodically evaluate the performance of co-specialists as described in Interpretation and Policy .04. As part of that process, the Committee may, from time to time, take steps to encourage a unit to reallocate books in the case of unsatisfactory performance by a co-specialist.

For example, based on the informal hearing with a co-specialist described in Article XVII, Rule 2, the Committee may believe that the co-specialist cannot bring his performance up to the required level within a reasonable period of time. The Committee may then encourage the specialist to reassign the issues to a stronger co-specialist. Because the Committee does not want any disincentive for the specialist unit to assign issues to the strongest possible co-specialist, it will permit reallocation without posting in such circumstances prior to a final determination by the Committee to reassign an issue. Any such intrafirm transfer should be to an obviously stronger co-specialist.

(b[a]) When a co-specialist *or specialist* has [low evaluation ratings] *unsatisfactory performance,* the Committee may *also* proceed according to Article XVII[, of Rule 2] of the Rules of the Exchange to *re*-assign one or more issues traded by that co-specialist *by suspending his registration in the securities or by terminating his registration in the securities. The Committee may also require a specialist to reassign the issue to a satisfactory performer.*

A co-specialist's or specialist's registration, in one or more of the securities in which he or it is registered, may be suspended or terminated by the Committee on Specialist Assignment and Evaluation upon a determination that the co-specialist has not satisfactorily performed his responsibilities as co-specialist. A determination by the Committee on Specialist Assignment and Evaluation to suspend or terminate a co-specialist's or specialist's registration may be based on (a) any statistical data on the co-specialist's activities or performance as co-specialist, including data identifying a co-specialist's violations of Federal law and/or Exchange rules and policies and data that reveals the quality of the co-specialist's order executions; and (b) any action previously taken against the co-specialist for unsatisfactory performance and shall be made in accordance with rules of the Exchange establishing fair procedures, such as those set out in Article XVII of the Exchange's Rules. Once the Committee has made a formal determination that the performance of a co-specialist is unsatisfactory and that the books should be reassigned, the books will be posted without an opportunity for an intra-unit transfer.[Only co-specialists will be periodically evaluated since only co-specialists actually trade the book. Relief specialists only trade the book in the absence or inability of the co-specialists to do so. Specialists have the financial responsibility for the book and for any actions, errors or omissions of the co-specialists, or relief specialists for the particular book.]

[(b) From time to time, the Committee may take steps to encourage a unit to reallocate books in the case of unsatisfactory performance by a co-specialist.]

[(i) For example, based on an informal hearing with a co-specialist, the Committee may believe that the co-specialist can bring his performance up to the required level within a reasonable period of time. The Committee may then encourage the specialist to reassign the issues to a stronger co-specialist. Because the Committee does not want any disincentive for the specialist unit to assign issues to the strongest possible co-specialist, it will permit reallocation without posting in such circumstances prior to a final determination by the Committee to reassign an issue. Any such intrafirm transfer should be to an obviously stronger co-specialist.]

[(ii) In the case of continued unsatisfactory performance by a co-specialist, the Committee may require the specialist to reassign the issue to a satisfactory performer.]

[(iii) Once the Committee has made a formal determination that the performance of a co-specialist is unsatisfactory and that the books should be reassigned, the books will be posted without an opportunity for an intra-unit transfer.]

8. No change to text.

II. Assignment Procedures

2. Decision Making. The Committee will hold assignment meetings as appropriate, consistent with the schedules of the Committee members. In advance of each meeting, members of the Committee will be provided by the Exchange with data on the securities to be assigned, copies of the applications, and the most recent performance evaluation ratings and other data on the applicants and the relevant co-specialist. Applicants *will receive, a reasonable time prior to the meeting, copies of the data relating to their own performance that is shared with the Committee and* may make personal appearances at the assignment meetings in support of their applications. These appearances will begin at 3:30*, if the applicants request this meeting time* to accommodate floor members' schedules. Before all personal appearances, a closed meeting of the Committee will be held to review all data provided to the Committee by the Exchange.

In the absence of applications which the Committee considers acceptable, the Committee may assign a new security to any unit which it believes to be qualified. If there are no acceptable applications for a security that is up for reassignment, the Committee may leave the stock with the incumbent specialist unit or reassign it to a new unit which it believes to be qualified.

3.–5. No change to text.

III. Guidelines for Assignment of Issues to Co-Specialists

1. Basic Standard. In reviewing an application to act as the specialist in a security, the Committee will, in addition to evaluating the qualifications of the specialist unit, consider the designated co-specialist's demonstrated ability, experience and financial responsibility in accordance with Article XXX, Rule 1 of the Rules.

The Committee will determine the respective weights to be given to each of these three factors in arriving at a decision as to whether to approve or disapprove any particular application. In deciding among applicants who have

designated co-specialists with approximately comparable demonstrated ability and experience, the Committee may consider additional factors, including the number and type of stocks in which each designated co-specialist is already registered as co-specialist, recent registration decisions and the overall best interest of the Exchange.

(a) Demonstrated ability. In evaluating demonstrated ability, the Committee will rely primarily on:

1. The results of the co-specialist evaluation questionnaire, including individual comments from responding floor brokers;

2. Other statistical data on the designated individual's activities or performance as a co-specialist, including [surveillance] data *identifying a co-specialist's violations of Federal law and/or Exchange rules and policies and data that reveals the quality of the co-specialist's order executions;*

3. Any action previously taken against the designated individual for unsatisfactory performance of his obligations as a co-specialist; and

4. Any other information submitted *to the Committee,* by the applicant *or by any other person or entity,* which bears on the designated individual's ability to carry out the responsibilities of a co-specialist.

Of these sources of information, the Committee will give substantial weight to the *data that reveals the quality of the co-specialist's order executions* [co-specialist evaluation questionnaire and may give varying weights to individual questions in the questionnaire]. All information will be evaluated in terms of the standards in the co-specialist job description and the Code of Acceptable Business Practices for co-specialists, with particular emphasis on (i) the co-specialist's demonstrated ability to make continuous two-sided markets in depth, and (ii) the co-specialist's demonstrated ability to trade in such a manner as to increase the order flow to the Exchange and, hence, the competitiveness of its market with markets elsewhere.

(b) No change to text.

(c) No change to text.

.02 Co-Specialist Job Description

I. General

[I. General]

An Exchange member who is registered as a co-specialist is accountable to the Exchange and the investing public for the quality of the Exchange markets in the securities in which he is registered and is responsible for fostering and acting to maintain liquid and continuous two-sided auction markets on the Exchange Floor in those securities. This is accomplished by his acting as agent and principal in such securities, in accordance with the provisions of Federal *law* and Exchange rules and policies, to help ensure that such markets are fair, orderly and operationally efficient in the public interest, and competitive with non-Exchange markets in those securities. A ''fair'' market is one which is free from manipulative and deceptive practices and which affords no undue advantage to any of the participants therein. An ''orderly'' market is one with regularity and reliability of operation manifested by the presence of price continuity and depth exhibited by the avoidance of large and unreasonable price variations between consecutive sales on the consolidated tape for Dual Trading System issues, on the Exchange tape for exchange issues and on the NASDAQ System for Nasdaq/NM Securities and the avoidance of overall price movements, without appropriate accompanying volume.

[A co-specialist's continuing registration in the securities in which he is registered is dependent upon his satisfactory performance of his responsibilities as a co-specialist as defined in Federal and Exchange rules, interpretations, releases and notices, this job description, the Code of Acceptable Business Practices for co-specialists and the rules and practices for trading on the Exchange. A co-specialist's registration, in one or more of the securities in which he is registered, may be suspended or terminated by the Committee on Specialist Assignment and Evaluation upon a determination that he has not satisfactorily performed his responsibilities as co-specialist. A determination by the Committee on Specialist Assignment and Evaluation to suspend or terminate a co-specialist's registration may be based on answers by floor members to questionnaires sent out by the Committee and shall be made in accordance with rules of the Exchange establishing fair procedures.]

II. Principal Duties

[II. Principal Duties]

III. Eligibility Requirements

[III. Eligibility Requirements]

.03 Code of Acceptable Business Practices for Co-Specialists

No change to text.

.04 Co-Specialist Performance Evaluation

A co-specialist's continuing registration in the securities in which he is registered is dependent upon his satisfactory performance of his responsibilities as a co-specialist as defined in Federal and Exchange rules, interpretations, releases and notices, the Co-Specialist Job Description, the Code of Acceptable Business Practices for co-specialists and the rules and practices for trading on the Exchange.

The Committee on Specialist Assignment and Evaluation shall periodically evaluate the performance of co-specialists. The Committee may choose, in its discretion, to evaluate the performance of relief or temporary specialists.

I. Performance Leading to Automatic Meeting With Committee

The Committee shall review data, compiled on an issue-by-issue basis, which identifies the co-specialists who have had low order execution quality scores in two consecutive evaluation periods when compared to other co-specialists. For purposes of this provision, an ''evaluation period'' is a period of three months. The term ''order execution quality score'' means the cumulative score, in a particular issue, of two equally-weighted factors derived from data compiled pursuant to SEC Rule 11Ac1–5: (a) effective spread index, and (b) speed of execution. The term ''bottom tier'' shall mean the bottom 5% of all stocks traded by co-specialists, when ranked using the order execution quality score.

If a co-specialist's order execution quality score for any security is in the bottom tier, for two consecutive periods, of the ranking reviewed by the Committee, the co-specialist shall be notified of that fact and shall be required to have an initial meeting with one or more members of the Committee, as described in Article XVII, Rule 2. These meetings shall take place as soon as reasonably possible after the end of each applicable evaluation period. Based on the results of that meeting, the Committee may take a variety of informal actions designed to provide encouragement and assistance to the co-specialist, including, but not limited to, encouraging the specialist firm to reallocate part of the co-specialist's book. Nothing in this rule would permit the Committee, however, to suspend the co-specialist's registration or reallocate a security in which the co-specialist is registered without the use of the procedures described in Article XVII.

II. Other Performance Measures Leading to Possible Meeting With Committee

The Committee shall have the ability to review any other data relevant to a co-specialist's performance such as (a) any statistical data on the co-specialist's activities or performance as co-specialist (including data identifying a co-specialist's violations of Federal law and/or Exchange rules and policies and other data that reveals the quality of the co-specialist's order executions); and (b) any action previously taken against the co-specialist for unsatisfactory performance. The Committee may determine, based on any or all of these performance measures, that a co-specialist's performance warrants the initial meeting described in Article XVII, Rule 2 and may take, as a result of that meeting, any of the actions described above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CHX 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

Under the Exchange's rules, the Committee on Specialist Assignment and Evaluation (''CSAE'') is charged with the responsibility of assigning new securities to co-specialists and evaluating the work of those co-specialists after the securities are assigned. Article XXX, Rule 1, Interpretation .01 describes the assignment process followed by the CSAE and identifies the factors that the CSAE should consider in making its assignment decisions. This interpretation also describes the situations where the CSAE may re-assign a security due to the unsatisfactory performance of a co-specialist or specialist. Interpretation .02 to the same rule contains the co-specialist job description and a code of acceptable business practices for co-specialists. This submission seeks to make changes to both of those provisions and to add a new section, Interpretation .04, to set out a specific co-specialist performance evaluation process. In addition, the Exchange proposes to revise its floor member questionnaire.

Assignment decisions. When reviewing a member firm's application to act as the specialist in a security, the CSAE evaluates the qualifications of both the specialist unit as a whole and the individual co-specialist who is designated to trade the security. In reviewing a co-specialist's qualifications, existing CHX rules permit the CSAE to consider specific factors relating to the co-specialist's demonstrated ability, experience and financial responsibility.[4] The CHX rules also permit the CSAE to consider additional factors, such as the number and type of stocks in which the co-specialist is already registered and the overall best interest of the Exchange.

This submission seeks to clarify the factors used by the CSAE in determining a co-specialist's demonstrated ability. Specifically, under this proposal the Exchange would (1) specifically confirm that the CSAE will review execution quality data during the assignment process; and (2) require that the CSAE give substantial weight to this execution quality data (instead of the results of the co-specialist evaluation questionnaire) when making its assignment decisions. These changes are designed to recognize the Exchange's view that the quality of the order executions given by a co-specialist should be one of the primary factors used by the CSAE in determining whether an individual should be designated as a co-specialist in a new security.[5]

Co-specialist evaluations. In addition to the proposed changes to the CHX rules governing the CSAE's assignment of securities, this submission seeks to set out a new co-specialist performance evaluation process and to change the CHX rules governing the CSAE's decisions to remove a security from a particular co-specialist.

a. In proposed Interpretation .04 (''Co-Specialist Performance Evaluation''), the Exchange describes a new process through which the CSAE would evaluate co-specialist performance against objective performance measures that employ a system of relative rankings. Specifically, the proposal would require the CSAE, or a subgroup of the CSAE, to hold a special performance meeting with the co-specialists who, on an issue-by-issue basis, rank (for two consecutive evaluation periods) in the bottom 5% of a special order execution quality score. The order execution quality score would be composed of two equally-weighted factors derived from data reported under SEC Rule 11Ac1–5: (1) Effective spread; and (2) speed of execution.[6] Although

[4] For example, when evaluating a co-specialist's demonstrated ability, the CHX rules require the CSAE to rely primarily on the results of the co-specialist evaluation questionnaire, other statistical data relating to the co-specialist's performance, any action previously taken against the co-specialist for unsatisfactory performance as a co-specialist, and any other information submitted by the applicant which bears on the person's ability to perform his co-specialist obligations. *See* CHX Article XXX, Rule 1, Interpretation and Policy .01 (III)(1)(a).

[5] Four minor changes to CHX Article XXX, Rule 1, Interpretation and Policy .01(II) and (III), are designed (1) to confirm that CSAE assignment meetings will take place after the close of trading only if requested by an applicant for a security; (2) to make clear that the CSAE will consider information submitted by any person, not just by the applicant, that bears on an individual's ability to carry out the responsibilities of a co-specialist; (3) to confirm that, prior to an assignment meeting, the Exchange will provide each co-specialist with copies of data that is being shared with the CSAE about that co-specialist; and (4) to replace a somewhat ambiguous reference to ''surveillance data'' with text confirming that the CSAE is given data ''identifying a co-specialist's violations of Federal law and/or Exchange rules and policies.'' This last change is not designed to change the information currently provided to the CSAE—the CSAE now receives data about rule violations that have resulted in fines under the Exchange's Minor Rule Violation Plan or in sanctions issued as a result of formal disciplinary proceedings—but merely to more accurately describe the information that is provided.

[6] The calculated score includes factors that compare an Exchange specialist's performance to the performance of the person or persons making markets in a designated market used as the competitive benchmark for the security. For example, in calculating the number of points for a co-specialist with respect to the effective spread in a particular stock, the Exchange would: (1) Calculate a share-weighted effective spread for the co-specialist, in each of the four Rule 11Ac1–5 order size levels, for both market and marketable limit orders, by multiplying the effective spread taken from each month's Rule 11Ac1–5 data by the number of shares traded on the Exchange, accumulating three months of data (because the evaluation period is three months long) and then dividing the share-weighted shares by the total number of shares traded on the Exchange; (2) Calculate a share-weighted effective spread for the appropriate competitive benchmark, using the same technique; (3) Determine the percentage difference between the CHX co-specialist and the competitive benchmark and convert the result into whole numbers; and (4) Add the points for each order size level to determine the overall point score for the effective spread in the security.

Similarly, in determining the points associated with speed of execution, the Exchange would (1) Calculate a share-weighted speed of execution for the CHX co-specialist in each of the Rule 11Ac1–5 order size levels, within each of the NBBO buckets (at the NBBO, inside the NBBO and outside the NBBO) by multiplying the number of executed shares in each bucket by the execution times set out in the Rule 11Ac1–5 data and then dividing that number by the total number of shares that were executed on the Exchange; (2) Calculate a share-weighted speed of execution for the competitive benchmark, using the same technique; (3) Determine the percentage difference between the

Continued

the CSAE intends to begin this new evaluation process by ranking co-specialists in all of the securities assigned for specialist trading, the CSAE may later choose to review co-specialist order execution quality scores as part of a ranking of the scores in smaller subgroups of securities traded by co-specialists.[7] Finally, this section of the proposal provides that the Committee may choose to use additional measures for evaluating specialist performance.[8]

b. Under the Exchange's existing rules, the CSAE may suspend or terminate a co-specialist's registration in a security based on the answers given by floor members to the co-specialist evaluation questionnaire.[9] This proposal would modify those rules to explicitly state that the CSAE may suspend or terminate a co-specialist's registration in an issue using factors almost identical to those used in making the initial decision to assign the security to the co-specialist, but not on the responses to the floor broker questionnaire.[10] Specifically, this proposal would allow a CSAE removal or suspension decision to be based on statistical data (such as order execution quality information, including the special order execution quality score described above, and data regarding a co-specialist's disciplinary history) and on actions previously taken against the co-specialist for unsatisfactory performance.[11]

These changes are designed to recognize the Exchange's view that the results of the co-specialist questionnaire are not the most appropriate factor that the CSAE should consider in making any decision to remove a security from a co-specialist. Other factors, including the individual's disciplinary history and the quality of the executions given to orders are, in many ways, better indicators of a co-specialist's performance.

The revised floor member questionnaire. Over the past several years, the Exchange has used a questionnaire that asks its floor members to rate the performance of CHX co-specialists in eight different categories.[12] A supplement to the survey required floor members to identify the number of interactions that they had with a particular co-specialist in an average trading month. Ratings were made on a scale of one to five, with five being the highest rating.[13] In recent evaluation periods, the vast majority of co-specialists received overall ratings (when the individual ratings are combined) that hovered around a score of three.

In recent months, the Exchange has worked to revise the questionnaire so that it is both more efficient for floor members to complete and more helpful to the CSAE. The revised questionnaire asks that a floor member give a single numerical rating (on a scale of one to three) to the overall performance of each individual co-specialist, evaluated against nine criteria.[14] Floor members must also rate the performance of each specialist firm against the same nine criteria, providing one overall rating for each firm. The questionnaire requests that a floor member provide a written description of any reasons supporting a score of one, which would indicate performance that ''does not meet'' the criteria. By requiring the floor members to provide one overall score for each co-specialist or specialist firm—but while also receiving written explanations of the reasons for any scores of one—the CSAE believes that it will secure the basic information that it needs to conduct this facet of its evaluation of co-specialists and specialist firms. In addition, the shortened form, which replaces the current eight separate ratings in distinct categories with one overall rating that covers nine separate performance measures, would allow the Exchange's floor members to provide important input on specialist performance while not being required to spend an excessive amount of time doing so.[15]

CHX co-specialist and the competitive benchmark and convert the result into whole numbers; and (4) Add the points for each order size level to determine the overall point score for speed of execution in the security.

To determine an overall score for a co-specialist, the Exchange would then add together the total effective spread points and the total speed of execution points.

[7] If the Committee chooses to rank co-specialist order execution quality scores within a smaller subgroup of securities, the Exchange understands that it must identify that subgroup by filing a rule change proposal with the Commission. The Exchange intends to submit those filings as interpretations of existing Exchange rules under Section 19(b)(3)(A) of the Act and SEC Rule 19b–4(f)(1). Similarly, if the Exchange intends to use other order execution quality statistics in its performance review process, it will make additional submissions to the Commission to identify the data that it intends to use and the objective performance measures that relate to it.

[8] Importantly, the proposal is integrated with the procedures that already exist for handling unsatisfactory performance by co-specialists. Under Article XVII of the Exchange's Rules, the CSAE may remove a co-specialist's registration in a particular security after (a) holding an initial, informal meeting with the member; and, if performance does not improve, (b) convening a more formal hearing to determine whether it is appropriate to take one or more securities away. The new performance evaluation process causes the CSAE to hold the first of these meetings with co-specialists who rank in the bottom 5% of the special order execution quality score for two consecutive evaluation periods. The Exchange will not use order execution quality statistics other than those described in this filing in its performance evaluation process without submitting the rule change proposal under Section 19(b) of the Act. Telephone conversation between Ellen J. Neely, Senior Vice President and General Counsel, CHX, and Leah Mesfin, Attorney, Division, Commission, on May 17, 2004.

[9] *See* CHX Article XXX, Rule 1, Interpretation and Policy .01(I)(7) and Interpretation and Policy .02(I).

[10] *See* proposed new text in CHX Article XXX, Rule 1, Interpretation and Policy .01(I)(7). In addition to this new language, the CHX has proposed moving some of the text from Interpretation and Policy .02(I) to this section to combine into one location the discussion of unsatisfactory performance actions.

[11] The only other assignment factor that is not contained in this proposed list is one that permits the CSAE to consider other information that bears on the co-specialist's ability to carry out his or her responsibilities.

[12] These categories seek ratings as to how well a co-specialist (1) displays bids and offers for actively traded issues; (2) accepts and fills orders in thinly traded issues; (3) executes public limit orders on a timely basis; (4) fills retail orders when the order is larger than the best bid or offer; (5) deals with professional orders; (6) deals with the block cross situation; (7) provides information to brokers; and (8) resolves and adjusts errors.

[13] Within each category, the form provided additional text that was presumably designed to guide the floor member in choosing the appropriate rating. For example, in the category relating to resolution and adjustment of errors, this text noted that a rating of one means that a co-specialist ''refuses to take an error even if it is the specialist's fault;'' that a rating of three means that a specialist ''usually resolves and adjusts errors in a fair manner;'' and that a rating of five means that a specialist ''always resolves and adjusts errors in a fair manner.''

[14] These new categories ''which incorporate many of the same concepts embodied in the original criteria ''require consideration of how well a co-specialist (1) displays public orders; (2) accepts and fills orders pursuant to minimum requirements; (3) executes public limit orders on a timely basis; (4) is generally helpful in providing depth and liquidity when necessary; (5) accepts and reflects bids and offers that better the existing market (*i.e.*, professional orders); (6) does not inappropriately interfere with cross trades; (7) provides relevant information to floor brokers; (8) resolves and adjusts disputes in a timely and fair manner; and (9) adheres to all applicable rules of the Exchange. The last criterion ''which seeks input on a co-specialist's adherence to applicable Exchange rules ''was added to questionnaire to provide floor members with an opportunity to rate a co-specialist's compliance with rules other than those set out in criteria (1) through (8).

[15] The Exchange distributes these surveys twice each year, seeking floor member input on specialist performance. Representatives of floor broker firms participated in the re-design of the form, in large part because of their desire to ensure that the form does not impose unnecessary burdens on the people who are required to complete it, while still providing relevant performance information to the CSAE. The existing version of the form was viewed by these members as requiring too much time to complete, particularly when floor brokers have increased their use of automated means to send orders to specialists, thus decreasing the number of personal interactions between the two groups. The floor members who participated in the re-design of the form and the CSAE believe that the new form will provide an efficient tool for seeking floor member input, while not imposing unnecessary burdens.

2. Statutory Basis

The proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[16] In particular, the proposed rule is consistent with section 6(b)(5) of the Act[17] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as amended, including whether it 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–CHX–2004–10 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–CHX–2004–10. 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 CHX. 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–CHX–2004–10 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11653 Filed 5–21–04; 8:45 am]

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[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49715; File No. SR–NASD–2004–061]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of 97% Protected Notes Linked to the Global Equity Basket

May 17, 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 National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on May 12, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade 97% Protected Notes Linked to the Performance of the Global Equity Basket (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alex Kogan, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 10, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq provided certain details about the Nikkei 225 Index and the ES 50 Index.

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

Nasdaq proposes to list and trade the Notes. The Notes provide for a return based upon the Global Equity Basket (''Basket'') and for protection of 97% of the principal. The Basket is a basket of three indexes, each initially equally weighted: the Nikkei 225 Index (''Nikkei''), the Dow Jones EURO STOXX 50 Index (''ES50''), and the S&P 500 Index (''S&P 500'').

Under Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list the Notes for trading under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[5] In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[6] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for their customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to NASD Rule 2310(b), prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will rank equally with all of Merrill Lynch's other unsecured and unsubordinated debt. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will have a term to maturity of 93 months. The Notes will not pay interest and are not subject to redemption either by Merrill Lynch or at the option of any beneficial owner before maturity.[7]

At maturity, a beneficial owner will be entitled to receive a payment on the Notes based on the value of the Basket, but not less than $9.70 per Unit (''Minimum Redemption Amount''). Thus, the Notes provide investors the opportunity to obtain returns based on the Basket, and they provide for the return of at least 97% of the principal amount per Unit.

Any payment that a beneficial owner may be entitled to receive in addition to the Minimum Redemption Amount (the ''Supplemental Redemption Amount'') will depend entirely on: (a) the change in the average value of the Basket at the close of the market on five business days shortly before the maturity of the Notes (the ''Ending Value'') from the Basket's value when the Notes are priced for initial sale to the public, which will be set at 100 (the ''Starting Value''), and (b) the Participation Rate, which will be a fixed value between 1.00 and 1.05, as determined by Merrill Lynch on the date the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement to be delivered in connection with sales of the Notes.[8]

On the date when the Notes are priced, a multiplier will be assigned to each component index in the Basket, such that the product of such a multiplier and of the price of such an index is equal to 33.333. The value of the Basket will be the sum of the prices of its three component indexes, where each such price is adjusted by the use of a multiplier; the specific multiplier for each index is determined on the pricing date so as to assure that, initially, each index is weighted equally in the Basket (hence, the Starting Value will be equal to (33.333×3) or 100). The same multipliers that are determined on the date of Note pricing will then be used prior to maturity to calculate the Ending Value. Each component index's value will be adjusted by its initially established multiplier, and the sum of such three products will constitute the Ending Value. As such, the Ending Value will reflect the change that may have occurred in the combined value of the three component indexes, where the change in the value of each index is given equal weight.

The Supplemental Redemption Amount per Unit will equal:

[4] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993) (''1993 Order'').

[5] Merrill Lynch satisfies this listing criterion.

[6] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph [sic] to be listed on Nasdaq or the New York Stock Exchange (''NYSE'') or be an affiliate of a company listed on Nasdaq or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

[7] The actual maturity date is February 14, 2012.

[8] Merrill Lynch has advised Nasdaq that Merrill Lynch will determine the exact value of the Participation Rate based, in part, on the prevailing level of interest rates and other financial market conditions on the date when the Notes are initially priced. Such value will be within the range listed above. The value of the Participation Rate will determine the minimum Ending Value needed in order for a beneficial owner to be entitled at maturity to receive at least the full principal amount per Unit. However, under no circumstances, will the beneficial owner be entitled at maturity to less than 97% of the principal amount per Unit.

$$\left(\$10 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}}\right) \times \text{Participation Rate}\right),$$

but will not be less than zero.

As a result, the Basket value will need to increase by a percentage between 2.87% and 3.00%, depending upon the actual Participation Rate (and assuming that it is, as expected, in the range of 1.00 to 1.05 [9]), in order for a beneficial owner to be entitled to receive a total amount at maturity equal to the principal amount. If the value of the Basket decreases or does not increase sufficiently, a beneficial owner will be entitled to less than the principal amount of $10 per Unit. In no event, however, will a beneficial owner be entitled to less than the Minimum Redemption Amount.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Basket. The Notes are designed for investors who want to participate or gain exposure to the Basket, while protecting 97% of the principal, and who are willing to forego market interest payments on the Notes during the term of the Notes. The Commission has previously approved the listing of securities the performance of which has been directly or indirectly linked to or based on (wholly or partially) the Nikkei,[10] the ES50,[11] and the S&P.[12]

As stated, the Notes provide for a return on the Basket, which is a basket of three indexes, each initially equally weighted: the Nikkei 225 Index (''Nikkei''), the Dow Jones EURO STOXX 50 Index (''ES50''), and the S&P 500 Index (''S&P 500'').

The Nikkei is a stock index calculated, published and disseminated by Nihon Keizai Shimbun, Inc. (''NKS''), which measures the composite price performance of selected Japanese stocks. The Notes are not sponsored, endorsed, sold or promoted by NKS. NKS is a recognized source of business information in Japan and publishes a large business daily, The Nihon Keizai Shimbun, and four other financial newspapers. NKS is not affiliated with a securities broker or dealer. The Commission has previously approved the listing of other securities the performance of which has been linked to or based on, the Index.[13]

The Nikkei is currently based on 225 underlying common stocks traded on the Tokyo Stock Exchange (the ''TSE'') and represents a broad cross-section of Japanese industry. All 225 underlying stocks are listed in the First Section of the TSE and are, therefore, among the most actively traded stocks on the TSE. The Nikkei is a modified, price-weighted index, which means a component stock's weight in the Nikkei is based on its price per share rather than total market capitalization of the issuer.

NKS calculates the Nikkei by multiplying the per share price of each underlying stock by the corresponding weighting factor for that underlying stock (a ''Weight Factor''), calculating the sum of all these products and dividing that sum by a divisor. The divisor, initially set on May 16, 1949 at 225, was 23.156 as of April 30, 2004, and is subject to periodic adjustments as set forth below. Each Weight Factor is computed by dividing ¥50 by the par value of the relevant underlying stock, so that the share price of each underlying stock when multiplied by its Weight Factor corresponds to a share price based on a uniform par value of ¥50. Each Weight Factor represents the number of shares of the related underlying stock, which are included in one trading unit of the Nikkei. The stock prices used in the calculation of the Nikkei are those reported by a primary market for the underlying stocks, which is currently the TSE. The level of the Index is calculated once per minute during TSE trading hours. The value of the Index is readily accessible by U.S. investors at the following Web sites: *http://www.nni.nikkei.co.jp* and *http://www.bloomberg.com.* As noted below, because of the time difference between Tokyo and New York, the closing level of the Index on a trading day will generally be available in the United States by the opening of business on the same calendar day.

In order to maintain continuity in the level of the Nikkei in the event of certain changes due to non-market factors affecting the underlying stocks, such as the addition or deletion of stocks, substitution of stocks, stock dividends, stock splits or distributions of assets to stockholders, the divisor used in calculating the Nikkei is adjusted in a manner designed to prevent any instantaneous change or discontinuity in the level of the Index. The divisor remains at the new value until a further adjustment is necessary as the result of another change. As a result of each change affecting any Underlying Stock, the divisor is adjusted in such a way that the sum of all share prices immediately after the change multiplied by the applicable Weight Factor and divided by the new divisor, *i.e.*, the level of the Index immediately after the change, will equal the level of the Index immediately prior to the change.[14]

[9] *See* Amendment No. 1, *supra* note 3.

[10] *See* Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of Market Index Target-Term Securities, the return on which is based on changes in the value of a portfolio of 11 foreign indexes, including Nikkei).

[11] *See* Securities Exchange Act Release Nos. 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving listing of BRoad InDex Guarded Equity-linked Securities linked to the value of the ES50); and 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving listing of notes based on the Dow Jones EURO STOXX 50 Return Index, which is based on the ES50).

[12] *See* Securities Exchange Act Release Nos. 48677 (October 21, 2003), 68 FR 61524 (October 28, 2003) (approving the listing and trading of Accelerated Return Notes linked to the S&P 500); 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500).

[13] *See* Securities Exchange Act Release Nos. 49670 (May 7, 2004) (approving the listing and trading of Accelerated Return Notes Linked to the Nikkei 225 Index); 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of Market Index Target-Term Securities, the return on which is based on changes in the value of a portfolio of 11 foreign indexes, including the Nikkei 225 Index); and 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (approving listing of Index Warrants based on the Nikkei Stock Average and noting the existence of a Memorandum of Understanding between the Commission and the Japanese Ministry of Finance for surveillance purposes).

[14] Underlying stocks of the Nikkei may be deleted or added by NKS. However, to maintain continuity in the Index, the policy of NKS is generally not to alter the composition of the Underlying Stocks except when an Underlying Stock is deleted in accordance with the following criteria. Any stock becoming ineligible for listing in the First Section of the TSE due to any of the following reasons will be deleted from the Underlying Stocks: bankruptcy of the issuer; merger of the issuer into, or acquisition of the issuer by, another company; delisting of the stock or transfer of the stock to the ''Seiri-Post'' because of excess debt of the issuer or

Continued

As of April 30, 2004, the average daily trading volume for a single Nikkei component was approximately 4.8 million shares.[15] As of the same date, the market capitalization of the components ranged from 14.4 trillion yen to 33.7 billion yen. These figures correspond approximately to 130 billion U.S. dollars and 305 million U.S. dollars.

The Nikkei is composed of 225 securities and is broad-based. The highest-weighted stock in the Index has the weight of 3.35%; all other components have lower weights. The top five stocks in the Nikkei have the cumulative weight of approximately 14.3%.

The ES50 was created and is published by STOXX, a joint venture founded by SWX-Swiss Exchange, SBF-Bourse de Paris, Deutsche Borse AG and Dow Jones & Company. The companies that are included in the ES50 are selected by STOXX and are representative of a broad market and a wide array of European industries. Publication of the ES50 began on February 26, 1998, based on an initial value of the ES50 of 1,000 at December 31, 1991. The ES50 is currently calculated by (i) multiplying the per share price of each underlying security by the number of outstanding shares (and, if the stock is not quoted in euros, then multiplied by the country currency and an exchange factor which reflects the exchange rate between the country currency and the euro); (ii) calculating the sum of all these products (the ''Index Aggregate Market Capitalization''); and (iii) dividing the Index Aggregate Market Capitalization by a divisor which represents the Index Aggregate Market Capitalization on the base date of the ES50 and which can be adjusted to allow changes in the issued share capital of individual underlying securities, including the deletion and addition of stocks, the substitution of stocks, stock dividends and stock splits, to be made without distorting the ES50. The value of the ES50 is updated by STOXX every 15 seconds when the European markets are open. The 15-second value of the ES50 and the identity of the individual ES50 components can be accessed from *http://www.stoxx.com.*

Moreover, the following stock markets are currently the primary listing markets for the ES50 components: Deutsche Borse (21.3% of the ES50 weight), Euronext Amsterdam (18.2%),[16] Borsa Italiana (10.9%), Euronext Paris (32.2%), the Spanish Stock Market (13.1%) and HEX Helsinki (4%). A number of the ES50 components are traded on more than one major European market. In addition, 34 of the 50 ES50 issuers currently have sponsored ADRs listed on the New York Stock Exchange, and 4 have non-sponsored ADRs trading in the United States.

The composition of the ES50 is reviewed annually, and changes are implemented on the third Friday in September, using market data from the end of July as the basis for the review process. Changes in the composition of the ES50 are made to ensure that the ES50 includes those companies that, within the eligible countries and within each industry sector, have the greatest market capitalization. Changes in the composition of the ES50 are made entirely by STOXX without consultation with the corporations represented in the ES50 or with Merrill Lynch. The ES50 is also reviewed on an on-going basis, and change in the composition of the ES50 may be necessary if there have been extraordinary events for one of the issuers of the underlying securities, *e.g.*, delisting, bankruptcy, merger or takeover. In these cases, the event is taken into account as soon as it is effective. The underlying securities may be changed at any time for any reason. Neither STOXX nor any of its founders is affiliated with Merrill Lynch and neither has participated in any way in the creation of the Notes.

Merrill Lynch or its affiliates may presently and from time to time engage in business with the publishers, owners or creators of the ES50 or the issuers of the underlying securities, including extending loans to, making equity investments in or providing advisory services, including merger and acquisition advisory services, to the publishers, their successors, founders or creators, or to any of the issuers. Merrill Lynch may also act as market maker for the common stock of the issuers. A representative of an affiliate of Merrill Lynch may, from time to time, be a member of the STOXX Limited Advisory Committee, which advises the Supervisory Board on matters related to the ES50, including proposing changes in its composition and recommendations with respect to the accuracy and transparency of index computation. (Decision on the composition of and changes in the ES50 are reserved to the Supervisory Board.) At the present time, the Advisory Committee does not include any representatives of a Merrill Lynch affiliate.

As of April 30, 2004, the average daily trading volume for a single ES50 component was approximately 14.2 million shares.[17] As of the same date, the market capitalization of the components ranged from approximately 100 billion euros to approximately 10 billion euros. These figures corresponded approximately to 119.8 billion U.S. dollars and 11.98 billion U.S. dollars.

The highest-weighted stock in the ES50 has the weight of approximately 7.2%; all other components have lower weights. The top five stocks in the ES50 have the cumulative weight of approximately 25 percent.

In calculating the ES50, STOXX uses a divisor, currently equal to 500.424521, which represents the Index Aggregate Market Capitalization on the base date and which can be adjusted to allow changes in the issued share capital of individual underlying securities, including the deletion and addition of stocks, the substitution of stocks, stock dividends and stock splits, to be made without distorting the ES50.

Because Merrill Lynch, a broker-dealer, or its affiliate, may assist in maintaining the ES50, it is imperative that there be a functional separation, such as a firewall, between the trading desk of the broker-dealer and the research persons responsible for maintaining the ES50.[18] Merrill Lynch has represented that such a firewall exists. Moreover, Merrill Lynch also has represented that it has policies that prohibit the distribution of material, non-public information by its employees.[19]

The S&P 500 is published by Standard & Poor's, a division of The McGraw-Hill

because of any other reason; or transfer of the stock to the Second Section of the TSE. Upon deletion of a stock from the Nikkei, NKS will select, in accordance with certain criteria established by it, a replacement for the deleted underlying stock. In an exceptional case, a newly listed stock in the First Section of the TSE that is recognized by NKS to be representative of a market may be added to the underlying stocks. As a result, an existing underlying stock with low trading volume and not representative of a market will be deleted.

[15] This figure represents the average number of shares traded for the past 30 trading days. It is calculated by taking the sum of the volumes of the individual Nikkei components for the past 30 trading days and dividing it by 30.

[16] One of the component stocks with a primary listing in Amsterdam maintains a second ''primary listing'' on Euronext Brussels. This component comprises approximately 1.6% of the total ES50 weight.

[17] This figure represents the average of the average numbers of shares of each ES50 component traded for the past 30 trading days. It is calculated by taking the sum of the volumes of the individual ES50 components for the past 30 trading days, dividing it by the total number of components (50), and then dividing the result by 30.

[18] *See* Letter from Satch Chada, Director, Merrill Lynch, to Florence Harmon, Senior Special Counsel, Division, Commission, dated May 13, 2004.

[19] *Id.*

Companies, Inc. (''S&P'') and is intended to provide an indication of the pattern of common stock price movement. The S&P 500 is a capitalization-weighted index, with each stock's weight proportionate to its market value. The value of the S&P 500 is based on the relative value of the aggregate market value of the common stocks of 500 companies as of a particular time compared to the aggregate average market value of the common stocks of 500 similar companies during the base period of the years 1941 through 1943. The market value for the common stock of a company is the product of the market price per share of the common stock and the number of outstanding shares of common stock. As of February 27, 2004, 424 companies or 84.3% of the market capitalization of the S&P 500 traded on the NYSE; 74 companies or 15.5% of the market capitalization of the S&P 500 traded on The Nasdaq National Market; and 2 companies or 0.2% of the market capitalization of the S&P 500 traded on the American Stock Exchange LLC (''Amex''). As of February 27, 2004, the aggregate market value of the 500 companies included in the S&P 500 represented approximately 77% of the aggregate market value of stocks included in the S&P Stock Guide Database of domestic common stocks traded in the U.S., excluding ADRs, limited partnerships and mutual funds. S&P selects companies for inclusion in the S&P 500 with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the S&P Stock Guide Database, which S&P uses as an assumed model for the composition of the total market. Relevant criteria employed by S&P include the viability of the particular company, the extent to which that company represents the industry group to which it is assigned, the extent to which the market price of that company's common stock is generally responsive to changes in the affairs of the respective industry and the market value and trading activity of the common stock of that company. S&P may from time to time, in its sole discretion, add or delete companies to achieve the objectives stated above. The value of the S&P 500 is updated every 15 seconds.

As of March 30, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of approximately $308 billion to a low of approximately $931 million. The average daily trading volume for the S&P 500 over the previous six months, as of the same date, ranged from a high of approximately 28 million shares to a low of approximately 129,000 shares.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates. The NASD represents that it is able to adequately surveil the trading activity of the underlying indexes to detect and deter manipulation. If manipulative activity or other types of trading activity that raise regulatory concerns are suspected and involve the Nikkei 225 component stocks, the NASD will rely on the Intermarket Surveillance Group (''ISG'') Agreement to obtain the needed information from the TSE. This Agreement obligates the NASD and the TSE to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information or responses thereto. Also, if it ever became necessary (for example, if, hypothetically, the TSE withdrew from the ISG), NASD would seek the Commission's assistance pursuant to memoranda of understanding or similar inter-governmental agreements or arrangements that may exist between the Commission and the Japanese securities regulators.[20]

If manipulative activity or other types of trading activity that raise regulatory concerns are suspected and involve ES50 component stocks, then, in order to obtain the needed information, the NASD will also rely on the ISG Agreement to which the NASD and some of the ES50 markets are parties, on the memoranda of understanding (''MOUs'') between the Commission and the relevant foreign regulators, and on information available domestically with respect to those issuers that list sponsored ADRs in the United States (the ISG Agreement, the MOUs and the sponsored ADRs are together referred to as the ''Arrangements''). At present, in excess of 90% of the capitalization of the ES50 is subject to the Arrangements.[21]

Nasdaq will contact Commission staff regarding continued listing of the Notes linked to the Basket if: (i) The component securities representing more than 50% of the capitalization of the Basket are not subject to the Information Sharing Agreements (''ISAs'') with the NASD; or (ii) the components of the Basket representing more than 20% of the capitalization of the Basket and maintaining their primary listing on the same market are not subject to the ISAs with the NASD and the MOUs; or (iii) the components of the Basket representing more than 33⅓ % of the capitalization of the Basket and maintaining their primary listing on one of the same two markets are not subject to the ISAs with the NASD.[22]

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[23] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability of recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

The providers of the indexes included in the Basket are not obligated to continue the calculation and dissemination of these indexes. In the event the calculation and dissemination of any of the three underlying indexes is discontinued, Nasdaq will consult with the Commission and will consider prohibiting the continued listing of the Notes.

[20] Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, Commission, dated May 7, 2004.

[21] Nasdaq represents that there is only one foreign stock exchange, HEX Helsinki, currently represented in the ES50 that is not subject either to the ISG Agreement with the NASD or to an MOU with the Commission. There is one ES50 stock that is currently listed on that exchange. This stock, Nokia, represents approximately 4 percent of the weight of the ES50, and has a sponsored ADR listed on the NYSE. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Hong-anh Tran, Special Counsel, Division, Commission, dated May 13, 2004.

[22] Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Hong-anh Tran, Special Counsel, Division, Commission, dated May 13, 2004.

[23] Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Pursuant to Rule 10A–3 of the Act[24] and Section 3 of the Sarbanes-Oxley Act of 2002,[25] Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[26] in general, and with Section 15A(b)(6) of the Act,[27] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with an investment vehicle based on the Basket.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 No. SR–NASD–2004–061 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-NASD–2004–061. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD–2004–061 and should be submitted by June 14, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Nasdaq requests that the Commission approve this filing on an accelerated basis since it raises no new or novel issues and will enable Nasdaq to accommodate the timetable of listing the Notes. In this regard, Nasdaq notes, and the Commission concurs, that the Commission has previously approved the listing of options on, and/or securities the performance of which has been linked to or based on the Nikkei,[28] the ES50,[29] and the S&P 500.[30] The Commission has also previously approved the listing of securities with a structure that is the same or substantially the same as that of the Notes.[31]

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities association, and, in particular, with the requirements of Section 15A(b)(6) of the Act[32] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[33] The Commission believes that the Notes will provide investors with a means of participating in the market for foreign securities. In particular, the Commission believes that the Notes will permit investors to obtain returns based on the S&P 500 as well as returns based on the component foreign markets while at the same time limiting the downside risk of the original investment as a result of the principal guarantee. The Notes are securities that entitle the holder to receive from the issuer upon maturity a pre-established

[24] 17 CFR 240.10A–3.

[25] *See* Section 3 of Pub. L. 107–204, 116 Stat. 745 (2002).

[26] 15 U.S.C. 78*o*-3.

[27] 15 U.S.C. 78*o*-3(b)(6).

[28] *See* Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of Market Index Target-Term Securities, the return on which is based on changes in the value of a portfolio of 11 foreign indexes, including Nikkei).

[29] *See* Securities Exchange Act Release Nos. 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving listing of BRoad InDex Guarded Equity-linked Securities linked to the value of the ES50); and 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving listing of notes based on the Dow Jones EURO STOXX 50 Return Index, which is based on the ES50).

[30] *See* Securities Exchange Act Release Nos. 48677 (October 21, 2003), 68 FR 61524 (October 28, 2003) (approving the listing and trading of Accelerated Return Notes linked to the S&P 500); 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500).

[31] *See* Securities Exchange Act Release Nos. 49301 (Feb. 23, 2004), 69 FR 9665 (March 1, 2004) (approving the listing and trading of 97% protected notes linked to the Dow Jones Industrial Average); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of partial principal protected notes linked to the S&P 500); and 48486 (Sept. 11, 2003), 68 FR 54758 (Sept. 18, 2003) (approving the listing and trading of contingent principal protection notes linked to the S&P 500).

[32] 15 U.S.C. 78*o*-3(b)(6).

[33] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

percentage of the principal amount of the Notes plus an amount based upon the increase in the market value of the Basket, if any. Specifically, the Commission notes that the Notes provide for the return of at least 97% of the principal amount per Unit. As described more fully above, if the value of the Basket decreases or does not increase sufficiently, a beneficial owner will be entitled to less than the principal amount of $10 per Unit. However, in no event will a beneficial owner be entitled to less than the Minimum Redemption Amount.

The Notes are a series of senior non-convertible debt securities whose price will be based on the value of the Basket. The Notes do not guarantee that the total amount at maturity will be equal to the principal amount. Thus, if the Basket has declined at maturity, a beneficial owner may receive 3% less than the original public offering price of the Notes. Because the final rate of return on the Notes is derivatively priced and based upon the performance of the value of three different indexes, two of which are foreign indexes, comprising the Basket, and because the Participation Rate limits investors' potential return, there are several issues regarding the trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[34] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[35] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee a total return of principal at maturity, that the Participation Rate on the Notes is expected to be between 100% and 105% per Unit,[36] that the Notes will not pay interest, and that the Notes will provide exposure in the indexes comprising the Basket. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers, in addition to information on the underlying indexes, will be publicly available.

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers,[37] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Fifth, the Commission believes that the listing and trading of the Notes should not unduly impact the market for the securities underlying the Basket or raise manipulative concerns. In approving the Notes, the Commission recognizes that the Basket measures the value of the equity securities of companies listed on various U.S. (*i.e.*, the S&P 500), European (*i.e.*, the ES50), and Asian (*i.e.*, the Nikkei) exchanges. In particular, the Commission notes that the S&P 500 is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE and the Amex. The Commission notes that the S&P 500 is determined, composed, and calculated by S&P. As of March 30, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of approximately $308 billion to a low of approximately $931 million. The average daily trading volume for the S&P 500 over the previous six months, as of the same date, ranged from a high of approximately 28 million shares to a low of approximately 129,000 shares. As of February 27, 2004, the aggregate market value of the 500 companies included in the S&P 500 represented approximately 77% of the aggregate market value of stocks included in the S&P Stock Guide Database of domestic common stocks traded in the U.S., excluding ADRs, limited partnerships and mutual funds. S&P chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the S&P's Stock Guide Database.

Further, the ES50, a market-capitalization weighted index, was created and is published by STOXX, a joint venture founded by SWX-Swiss Exchange, SBF-Bourse de Paris, Deutsche Borse AG and Dow Jones & Company. The following stock markets are currently the primary listing markets for the ES50 components: Deutsche Borse (21.3% of the ES50 weight),

[34] *See* 1993 Order, *supra* note 4.

[35] As discussed above, Nasdaq will advise members recommending a transaction in the Notes to: (1) determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

[36] The Commission notes that the actual Participation Rate on the day the Notes are priced for initial sale to the public will be disclosed in the final prospectus supplement.

[37] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR–NASD–2001–73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR–Amex–2001–40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR–Amex–96–27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

Euronext Amsterdam (18.2%),[38] Borsa Italiana (10.9%), Euronext Paris (32.2%), the Spanish Stock Market (13.1%) and HEX Helsinki (4%). In addition, Nasdaq represents that a number of the ES50 components are traded on more than one major European market. In addition, 34 of the 50 ES50 issuers currently have sponsored ADRs listed on the NYSE, and 4 have non-sponsored ADRs trading in the United States. Thus, the Commission notes that the companies that are included in the ES50 are representative of a broad market and a wide array of European industries. As of April 30, 2004, the average daily trading volume for a single ES50 component was approximately 14.2 million shares.[39] As of the same date, the market capitalization of the components ranged from approximately 100 billion euros to approximately 10 billion euros. These figures corresponded approximately to 119.8 billion U.S. dollars and 11.98 billion U.S. dollars.

Moreover, the Commission notes that the Nikkei, a modified, price-weighted index, measures the composite price performance of 225 underlying common stocks traded on the TSE, and represents a broad cross-section of Japanese industry. All 225 underlying stocks are listed in the First Section of the TSE and are, therefore, among the most actively traded stocks on the TSE. As of April 30, 2004, the average daily trading volume for a single Nikkei component was approximately 4.8 million shares.[40] As of the same date, the market capitalization of the components ranged from 14.4 trillion yen to 33.7 billion yen. These figures correspond approximately to 130 billion U.S. dollars and 305 million U.S. dollars.

Given that all three indexes comprising the Basket are highly-capitalized and contain diversified securities listed on various U.S., European, and Asian exchanges, the Commission believes that the listing and trading of the Notes that are linked to the Basket should not unduly impact the market for the securities underlying the three indexes comprising the Basket or raise manipulative concerns. The Commission notes that all of the indexes underlying the Basket are established indexes. However, in light of the fact that the Nikkei and the ES50 are foreign indexes, the Commission believes adequate information sharing agreements with foreign regulators are a necessary prerequisite to deter as well as detect any potential manipulation or other improper or illegal trading involving the Notes. While many of the issuers of the underlying securities comprising the Nikkei 225 are not subject to reporting requirements under the Act, Nasdaq represents that an adequate surveillance sharing agreement exists through the ISG between the NASD and the TSE to deter and detect potential manipulations or other improper trading in the underlying components. Therefore, Nasdaq's surveillance procedures will serve to deter as well as detect any potential manipulation. This agreement obligates the NASD and TSE to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information. Accordingly, the Commission believes that the surveillance sharing agreement through ISG is adequate for the NASD to surveil the components of the Nikkei 225 for potential manipulation or other trading abuses between the markets with respect to the trading of the Notes based on the Nikkei 225. Nasdaq further represents that it will rely on the ISG Agreement to which the NASD and some of the ES50 markets are parties, on the MOUs between the Commission and the relevant foreign regulators, and on information available domestically with respect to those issuers that list sponsored ADRs in the United States (the ISG Agreement, the MOUs and the sponsored ADRs are together referred to as the ''Arrangements''). At present, Nasdaq represents that in excess of 90% of the capitalization of the ES50 is subject to the Arrangements. In addition, if the surveillance coverage for the ES50 falls below certain levels, as discussed above, Nasdaq will contact the Commission staff regarding continued listing of the Notes linked to the Basket. This should help to ensure that adequate surveillance mechanisms exist in the future.

Finally, the Commission notes that the values of the Nikkei, the ES50, and the S&P 500 indexes will be disseminated at least once every minute for the Nikkei, and once every 15 seconds for the ES50 when the European markets are open and the S&P 500 throughout the trading day. The Commission believes that providing real time access to the value of these indexes throughout the trading day is sufficient and will provide benefits to investors in the Notes.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing of options on, and/or securities the performance of which has been linked to or based on the Nikkei,[41] the ES50,[42] and the S&P 500.[43] The Commission has also previously approved the listing of securities with a structure that is the same or substantially the same as that of the Notes.[44]

Thus, the Commission believes that the proposal does not raise any new regulatory issues. Accordingly, the Commission believes that there is good cause, consistent with Sections

[38] One of the component stocks with a primary listing in Amsterdam maintains a second ''primary listing'' on Euronext Brussels. This component comprises approximately 1.6% of the total ES50 weight.

[39] This figure represents the average of the average number of shares of each ES50 component traded for the past 30 trading days. It is calculated by taking the sum of the volumes of the individual ES50 components for the past 30 trading days, dividing it by the total number of components (50), and then dividing the result by 30.

[40] This figure represents the average number of shares traded for the past 30 trading days. It is calculated by taking the sum of the volumes of the individual Nikkei components for the past 30 trading days and dividing it by 30.

[41] *See* Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of Market Index Target-Term Securities, the return on which is based on changes in the value of a portfolio of 11 foreign indexes, including Nikkei).

[42] *See* Securities Exchange Act Release Nos. 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving listing of BRoad InDex Guarded Equity-linked Securities linked to the value of the ES50); and 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving listing of notes based on the Dow Jones EURO STOXX 50 Return Index, which is based on the ES50).

[43] *See* Securities Exchange Act Release Nos. 48677 (October 21, 2003), 68 FR 61524 (October 28, 2003) (approving the listing and trading of Accelerated Return Notes linked to the S&P 500); 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500).

[44] *See* Securities Exchange Act Release Nos. 49301 (Feb. 23, 2004), 69 FR 9665 (March 1, 2004) (approving the listing and trading of 97% protected notes linked to the Dow Jones Industrial Average); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of partial principal protected notes linked to the S&P 500); and 48486 (Sept. 11, 2003), 68 FR 54758 (Sept. 18, 2003) (approving the listing and trading of contingent principal protection notes linked to the S&P 500).

15A(b)(6) and 19(b)(2) of the Act,[45] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–NASD–2004–061) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11650 Filed 5–21–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49717; File No. SR–NSCC–2004–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the National Securities Clearing Corporation's Continuous Net Settlement System

May 17, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 23, 2004, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on March 26, 2004, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to modify its Continuous Net Settlement (''CNS'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of the securities industry's straight-through processing (''STP'') initiative, NSCC has been engaged in a project to update and revise its CNS system (''CNS Rewrite''). The major aspects of the CNS Rewrite include a completely new platform on which the CNS system will run that will accommodate real-time updates to the system, will improve access to CNS and depository information for members, and will provide the capability to add trades to the settlement process on a real-time basis until 11:30 a.m. on settlement day.

The new CNS system, with a targeted implementation date of July 2004, will be able to take in trades until 11:30 a.m. on settlement day and net and settle them that day.[3] Two additional Consolidated Trade Summaries that will report trades settling on settlement date have been developed to support this. CNS will produce the Supplemental Consolidated Trade Summary at or about 2 a.m. and at or about 1 p.m. on each settlement date. In addition, so that members can update their CNS positions immediately, CNS will provide intraday messages for activity that occurs after the start of the day cycle[4] as a result of settling trades and miscellaneous activity going into CNS on settlement date. These messages will be optional to the member because the same information will also be reported in the second Supplemental Consolidated Trade Summary made available at 1 p.m. and in the Daytime Miscellaneous Activity Report[5] issued later in the afternoon on each settlement date. In addition, members will be able to view their CNS positions on a real-time basis on the Participant Browser Service (''PBS'') developed by The Depository Trust Company (''DTC''). The CNS Cash Reconciliation Statement will be updated on a real-time basis and will be available on PBS after night cycle processing.

Another new STP feature available in the new CNS system will be the ability to create automated Deliver Orders (''DOs'') for non-CNS, depository eligible securities.[6] Today, NSCC creates receive and deliver instructions, or balance orders, for non-CNS depository eligible securities which its members then have to enter as DOs at DTC. To automate and streamline the processing of trades in non-CNS, depository eligible issues, at the request of the delivering member, NSCC will create delivery versus payment DOs that will automatically be transmitted to DTC for processing. This is an optional feature that can be activated by the delivery of standing instructions to NSCC that will cover all of the deliverer's balance orders and special trades.[7]

Other new features that will be implemented include the enhancement of the CNS Stock Borrow Program to include acceptance of borrowing instructions for the day cycle and the acceptance and real-time application of CNS ''Fully Paid For'' securities instructions. The CNS Stock Borrow Program enhancement is intended to maximize the use of excess collateral and reduce the number of CNS fails. In addition to providing instructions for securities available for borrowing in the night cycle, members will now also be able to provide CNS with a new file of available excess collateral from 5 a.m. until 1 p.m. for use in the day cycle.

The real-time acceptance of CNS ''Fully Paid For'' instructions is intended to further facilitate members' compliance with securities segregation requirements. At the current time, a member that delivers securities in its possession or control in anticipation of receiving securities from CNS as a result of allocations during the night cycle may instruct NSCC to move the open CNS long position from its CNS A (long valued) Account to its Fully-Paid-For E

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[45] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] At the current time, trades in debt securities compared or recorded through NSCC's Real-Time Trade Matching (''RTTM'') system will not utilize this same day settling capability. Instead, as-of trades in such securities compared or recorded through RTTM after its cutoff time on T+2 will not settle in the normal settlement cycle but will be assigned a new settlement date which will be the settlement day following the day the trade is compared or recorded by NSCC.

[4] In general, the day cycle currently begins at approximately 7 a.m. and ends at 3:10 p.m., and the night cycle begins at approximately 7:00 p.m. and ends at 12:00 a.m.

[5] The Daytime Miscellaneous Activity Report will also include corporate actions, stock borrows, and any other miscellaneous activity received in CNS after the start of the day cycle.

[6] Transactions in securities that are not eligible for CNS are processed through NSCC's Balance Order Accounting Operation. Such securities are referred to as ''Balance Order Securities.''

[7] All such DOs will be subject to DTC's applicable DO fees. The DO standing instructions will cover all of the member's NSCC balance orders and special trades. The delivering member can use DTC's Inventory Management System if it wishes to control the timing and flow of any particular balance order transaction.

Subaccount to meet its customer segregation requirements. NSCC makes such movements at the end of the processing day and concurrently debits the member's settlement account for the value of the position in the E subaccount. NSCC then segregates the funds received as a result of such debit so that it constitutes a control location within the meaning of Securities Exchange Act Rule 15c3–3.[8]

The proposed CNS changes modify this procedure to (a) expand the capability of a member to utilize the Fully-Paid-For E Subaccount in anticipation of CNS allocations in the day cycle as well as the night cycle and (b) permit fully-paid instructions to be received and applied on a real-time basis during the day cycle up through 2:45 p.m. By accepting such instructions on a real-time basis, any securities received into a member's Fully-Paid-For E subaccount can automatically be updated to the member's memo seg position at DTC on an intraday basis at the member's election through standing instructions.[9]

The following is a summary of the proposed rule changes needed to implement the modifications to the CNS system:

(1) Rule 11, ''CNS System,'' is being amended to reflect the addition of the Supplemental Consolidated Trade Summaries that will be produced on each settlement day. Because of the new system's ability to take in trades, net them, and update CNS processing on a real-time basis on settlement day, Rule 11 is also being amended to make clear that with respect to trades settling on that day, a member's obligation to deliver or pay for and receive CNS securities will be fixed each time the member's net settling position is determined using CNS processing and the net settling position is made available by NSCC.

In addition, Section 9 of Rule 11 is being amended to provide the mechanism whereby a member with trades in CNS or Balance Order securities designated as ''Special Trades'' (which must be settled on a member-to-member basis) may issue NSCC standing instructions to provide automated DO instructions to DTC.[10] Any such instructions will cover all of the delivering member's balance orders and Special Trades.

(2) Rule 44, ''Deliveries Pursuant to Balance Orders,'' is being amended to provide the mechanism whereby a delivering member can issue standing instructions to NSCC to provide automated delivery instructions to DTC. Any such instructions will cover all of the delivering member's balance orders and Special Trades.[11]

(3) Procedures II, ''Trade Comparison Service,'' and III, ''Trade Recording Service (Interface Clearing Procedures),'' are being amended to make conforming changes to account for same day settling trades by indicating that the cutoff times for trade comparison and recording of as-of trades to settle on their originally designated settlement schedules will now be the cutoff time set on T+3 (instead of T+2). T+3 and older as-of trades received thereafter will be assigned a new settlement date, which will be the following settlement day.[12]

(4) Procedure V, ''Balance Order Accounting Operation,'' is being amended to reflect that security balance orders will be shown on the initial and Supplemental Consolidated Trade Summaries issued on each settlement day. An indicator will be added to these reports to reflect any standing instructions given by the member for the issuance of DOs for balance orders and Special Trades.

(5) Procedure VII, ''CNS Accounting Operation,'' is being amended to reflect (a) NSCC's ability to accept through 11:30 a.m. and process on a real-time basis on settlement date trades settling on that day, (b) the issuance of the two Supplemental Consolidated Trade Summaries on each settlement day, (c) the updated reports and methods of reporting information (including through real-time message updates, the web-based PBS screens which report updated CNS positions on a real-time basis, and additional Miscellaneous Activity Reports), and (d) certain conforming changes to properly reflect current processing.

In addition, the Fully-Paid-For Account procedures included in Procedure VII, ''CNS Accounting Operation,'' are being amended to reflect the extension of this program to the day cycle allocation process, the real-time acceptance of instructions through the day cycle, and the real-time application of such instructions. Also the Note accompanying Procedure VII.E.5. is being modified because the portion relating to stock loan recalls is no longer applicable.[13]

(6) Addendum C, ''NSCC Automated Stock Borrow Procedures,'' is being amended to reflect the extension of this service to the daytime processing cycle and to provide the mechanism whereby members can loan their available securities to NSCC in the morning of settlement day. These securities will be used for any shortfalls that the CNS system has in the day cycle.

The daytime stock borrow process will be separate from the nighttime stock borrow process. Securities that members make available for the nighttime process will not be applied in the daytime process. Members will have the option to participate in the nighttime stock borrow program, the daytime stock borrow program, or in both programs. The proposed changes also reflect the member's ability to be advised of any borrows through intraday messages so that members have the ability to make movements into their Fully-Paid-For Accounts as needed.

(7) Addendum G, ''Fully-Paid-For Account,'' is being amended to reflect that this application will be available to members on a real-time basis during the day cycle on each settlement day in order to facilitate members' compliance with their securities possession or control requirements.

At this time a clarification is also being made to Rule 12, ''Settlement,'' consistent with NSCC's collection and segregation of amounts debited with respect to positions in the Fully-Paid-For Account. It has always been understood that the movement into the E (Fully-Paid-For) subaccount was contingent upon the member's due payment of the funds debited with respect to the value of that position. It is the collection and segregation of such funds that permits NSCC to guarantee

[8] 17 CFR 240.15c3–3.

[9] For a description of DTC's memo seg service, refer to Securities Exchange Act Release No. 26250 (November 3, 1988), 53 FR 45638 [File No. SR–DTC–88–16].

[10] A technical change is also being made to this section to delete the reference to such trades having the status of ''security balance orders.'' This deletion should have been made at the same time Rule 18 was amended in 2000 clarifying that Special Trades are to be settled directly between the members. Securities Exchange Act Release No. 42747 (May 2, 2000), 65 FR 30170 [File No. SR–NSCC–98–14].

[11] Once this functionality is implemented, NSCC will no longer provide the PDQ Delivery System for Compare Municipal Transactions. This service currently provides for automated DTC delivery instructions for compared municipal bond transactions.

[12] At this time, no corresponding change is being made to Procedure II.D. because both the Fixed Income Transaction System (''FITS'') and its successor, RTTM, do not have same day settling trade capability. They will continue to maintain their current T+2 cutoff times so that trades received for comparison or recording by FITS or RTTM after T+2 will be assigned a new settlement date, which will be the settlement day following the date the trade is compared or recorded. A subsequent rule filing will be made to make any necessary conforming changes at such time as the RTTM system is modified to accept and process same day settling trades.

[13] The portion of the Note relating to stock loan recalls was made inapplicable pursuant to a no-action letter dated June 28, 1985 from Michael Macchiaroli, Assistant Director, to Robert J. Woldow, Senior Vice President and General Counsel, NSCC (June 28, 1985).

the position ''free of payment'' by a SIPC trustee and thus be a ''control location.'' Thus, Rule 12 is being amended to make clear that any movement of a long valued position to the Fully-Paid-For E subaccount will not become final until the member satisfies its end-of-day money settlement obligation.

(8) Addendum K, ''Interpretation of the Board of Directors—Application of Clearing Fund,'' is being amended to reflect that with respect to trades received by NSCC after commencement of the nighttime processing cycle and prior to 11:30 a.m., on each settlement day, NSCC's trade guaranty will attach to such trades as of the completion of trade comparison or trade recording processing of such trades.

(9) Consistent with NSCC's extension of its trade guaranty to same–day settling trades, Rule 15, ''Financial Responsibility and Operational Capability,'' is being amended to make clear that additional clearing fund payments that may be assessed on members may also include charges relative to such same-day settling trades.

In addition, the proposed rule change will make a number of technical corrections, including the following:

(1) It will define the terms ''Settlement Date''[14] and ''settlement day''[15] which are used throughout NSCC's Rules & Procedures and will make clear that the Consolidated Trade Summary is issued on each day that is a settlement day.

(2) It will revise Procedure I, ''Introduction,'' to delete references to SIAC as NSCC's facilities manager and to codify NSCC's longstanding established practice of setting data submission thresholds to minimize data transmission errors and data field requirements.

(3) It will change the heading of Procedure II, ''Trade Comparison Service,'' to ''Trade Comparison and Recording Service,'' to reflect that this procedure covers trade recording as well as trade comparison.

Subject to Commission approval, NSCC intends to implement these changes on or about July 9, 2004. At that time, all CNS Rewrite functionality will be implemented except for processing same-day settling trades and the two supplemental Consolidated Trade Summaries that support same-day trade settlement. NSCC intends to begin processing same-day settling trades and the supporting Consolidated Trade Summaries on or about August 5, 2004.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[16] and the rules and regulations thereunder applicable to NSCC because it will promote the prompt and accurate clearance and settlement of securities transactions by providing greater functionality and capacity to CNS and by allowing members to focus less attention on exception processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 Number SR–NSCC–2004–01 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–NSCC–2004–01. 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 NSCC and on NSCC's Web site at *http://www.nscc.com/legal.* 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–NSCC–2004–01 and should be submitted on or before June 14, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–11647 Filed 5–21–04; 8:45 am]

BILLING CODE 8010–01–P

[14] ''Settlement Date'' is defined as the date specified for a transaction to settle.

[15] ''Settlement day'' is defined as any business day on which settlement may be made through NSCC's facilities.

[16] 15 U.S.C. 78q–1.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49714, File No. SR–NYSE–2004–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Relating to the Listed Company Manual's Requirement that Companies Make Certain Paper Filings

May 17, 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 February 10, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 10, 2004, NYSE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reflects amendments to the NYSE's Listed Company Manual, which requires companies to make certain paper filings. Proposed new language is italicized; deletions are bracketed.

* * * * *

Listed Company Manual

204.00 Notices by the Company to the Exchange

(A) Prompt Written Notice to the Exchange

No change.

(B) Filings With the Exchange

The Exchange, *as well as the SEC,* requires *that* listed companies [to] file certain SEC reports and other material*s* (such as proxies[,] *and* prospectuses[, and earnings reports]) with the Exchange. [In addition, the SEC requires listed companies to file certain materials with the Exchange.] *Since all domestic and non-U.S. listed companies are required to* [For those listed companies that] file *their periodic and current reports, as well as other materials,* through the SEC's Electronic Data Gathering Analysis and Retrieval (EDGAR) system, the Exchange will access certain SEC documents through that system and*, except as provided below,* will not require a listed company to file [multiple] hard copies of *SEC filings* [such material] with the Exchange. Specifically, the Exchange *only requires companies to file hard copies of* [will accept an EDGAR filing of all material filed with the SEC, except:] material*s* necessary to support a listing application (see Paras. 703.00 & 903.00), proxy material*s* (see Para. 402.00) [and SEC Form 8–K filings] *and any filings made on Form 6–K that are not required to be filed through EDGAR.*

The paragraphs which follow in this section are intended only as a convenient reference and should not be regarded as interpreting fully the listing agreement or the requirements of the Exchange in respect to the matters itemized.

* * * * *

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 204.00(B) of the Exchange's Listed Company Manual currently requires listed companies to file certain SEC reports and other material (such as proxies, prospectuses, and earnings reports) with the Exchange. In addition, many of the forms promulgated by the Commission under the Securities Act of 1933 and the Act require listed companies to file certain material with the Exchange. However, since all domestic issuers and foreign private issuers are now required to file periodic and current reports through the Commission's Electronic Data Gathering Analysis and Retrieval (''EDGAR'') system, the Exchange no longer deems it necessary for companies to file multiple hard copies of many required filings with the Exchange.

The current requirement of section 204.00(B) of the NYSE's Listed Company Manual states that the Exchange will accept an EDGAR filing of all material filed with the Commission except material necessary to support a listing application, proxy materials, and SEC Form 8–K filings.[4] According to the Exchange, while domestic issuers have been subject to the EDGAR electronic filing requirements for several years, the Exchange has only recently implemented a system that provides to the NYSE staff member responsible for that specific company immediate electronic notification that a company has filed a Form 8–K. In addition, the Exchange represents that the system automatically flags and routes any Form 8–K related to NYSE compliance topics to the appropriate NYSE representative for their review and potential action. In light of the Exchange's capacity for immediate electronic access, the Exchange proposes to amend this requirement to clarify that it will no longer require hard copy filings of Commission Form 8–K filings.

According to the Exchange, NYSE representatives are also notified electronically when Form 6–Ks are filed on EDGAR for a specific company in the same manner described above. However, to the extent that foreign private issuers file paper versions of Form 6–K with the SEC, the Exchange proposes to clarify that hard copies of those filings will be required to be submitted to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change satisfies the requirement under section 6(b)(5)[5] of the Act that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 7, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 40220 (July 16, 1998), 63 FR 39620 (July 23, 1998); *see also* Letter to NYSE from Anne M. Krauskopf, Special Counsel, Division of Corporation Finance, and Howard L. Kramer, Senior Associate Director, Division, Commission, dated July 22, 1998 (providing no-action relief from certain requirements to file paper copies).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NYSE did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the 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–NYSE–2004–07 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–NYSE–2004–07. 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 NYSE. 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–NYSE–2004–07 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11649 Filed 5–21–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49713; File No. SR–PCX–2004–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Pacific Exchange, Inc. Creating an Additional Processing Capability for PNP Orders Called ''PNP Plus''

May 17, 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 February 23, 2004 the Pacific Exchange, Inc. (''PCX'' 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 PCX. On April 23, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On April 28, 2004, the PCX submitted Amendment No. 2 to the proposed rule change.[4] On May 11, 2004, the PCX submitted Amendment No. 3 to the proposed rule change.[5] 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 the Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, by adding additional processing capability for PNP Orders.

The text of the proposed rule change appears below. Proposed new language is in *italics.*

* * * * *

PCX Equities, Inc.

Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31. Orders and Modifiers

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO. PNP Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) will not be canceled at the time of order entry if such orders would lock or cross the NBBO. PNP Orders in ITS Trade-Through Exempt Securities may be executed at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote. The NBBO price protection provision set forth in Rule 7.37 will not apply to PNP Orders in Nasdaq securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 22, 2004 (''Amendment No. 1''). Amendment No. 1 superseded and replaced the original rule filing in its entirety. In Amendment No. 1, the PCX changed the proposal to make Post No Preference (''PNP'') Plus Order election an order-by-order designation, made conforming and clarifying changes in the rule text and provided an example of how a PNP Plus Order would be processed.

[4] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2004 (''Amendment No. 2''). In Amendment No. 2, the PCX corrected typographical errors and made clarifying changes in the rule text.

[5] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 10, 2004 (''Amendment No. 3''). In Amendment No. 3, the PCX made a clarifying edit to the rule text.

(1) PNP Plus. A PNP Order designated as PNP Plus will be automatically re-priced by the Corporation as a penny greater than the national best bid (for sell orders) or a penny lower than the national best offer (for buy orders) for any or all of the order that remains unexecuted and would otherwise lock or cross the NBBO should it be displayed in the Arca Book. The re-priced order will then be posted in the Arca Book. The PNP Plus order will continue to be re-priced at a penny greater than the national best bid (for sell orders) or penny lower than the national best offer (for buy orders) and re-posted in the Arca Book, with each change in the NBBO, until such time as the NBBO has moved to a price where the original price of the PNP Order no longer would result in a locked or crossed market, at which time the PNP Order will revert to the original price of such order. PNP Orders designated as PNP Plus shall be ranked in the Arca Book pursuant to Rule 7.36 and assigned a new price time priority as of the time of each reposting.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX 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

As part of its continuing efforts to enhance participation on ArcaEx, PCX proposes to adopt additional processing capability for PNP Orders[6] called ''PNP Plus.'' The Exchange believes that this new functionality would provide ETP Holders and Sponsored Participants with increased opportunities for executing PNP Orders while seeking to prevent locking or crossing the national best bid or offer (''NBBO'').

The Exchange's current rules governing PNP Orders are set forth in PCXE Rule 7.31. Presently, PCXE Rule 7.31 provides that a PNP Order is a limit order that executes within the ArcaEx Book without routing to another market center. The unexecuted portion of the order is then posted in the Arca Book pursuant to PCXE Rule 7.36. In the case where posting an order in whole or in part would otherwise lock or cross the national best bid or offer, the PNP Order or portion thereof currently is rejected back to the customer.[7]

The Exchange proposes to add additional processing capability that may be selected on an order-by-order basis designated as PNP Plus. Specifically, PNP Plus provides that, when posting a PNP Order or portion thereof would otherwise result in locking or crossing the national market, the PNP Order would automatically be re-priced to be a penny greater than the national best bid (for sell orders) and a penny lower than the national best offer (for buy orders) so as to avoid locking or crossing the national market. The order would then be posted in the Arca Book pursuant to PCXE Rule 7.36 and assigned a new price time priority as of the time of each re-posting. The order would continue to be re-priced and re-posted, with each change in the NBBO, until such time that the national market moves such that the original price of the PNP Order would no longer lock or cross the NBBO. The PNP Order would then automatically be re-priced back to its original limit price and be re-posted in the Arca Book with a new price time priority. The PNP Plus order would not be re-priced in the instance when the order becomes locked or crossed by another market.

Following is an example of the PNP Plus functionality:

PNP Plus Example

NBBO = 20.00 to 20.03 500C (NSX) × 500T (NASDAQ) + 200P (ArcaEx)
ArcaEx Book = 15.00 to 20.03 600 × 200
Order 1 − PNP Plus Buy 1,000 @ 20.06
200 trades at 20.03 leaving 800 shares of the PNP Plus Order
PNP Plus is quoted as 800 to buy at 20.02.
New NBBO = 20.02 to 20.03 800P (ArcaEx) × 500T (NASDAQ)
NBBO changes to 20.02 to 20.05 800P (ArcaEx) × 200N (NYSE)
Order 1 PNP Plus re-quotes to 20.04 bid (to re-price at $.01 from the NBBO) making the NBBO 20.04 to 20.05
Order 2 − Limit Buy 9,000 @ 20.04
NBBO becomes 20.04 to 20.05 9,800P (ArcaEx) × 200N (NYSE)
NBBO changes to 20.07 to 20.10 200N (NYSE) × 200N (NYSE)
Order 1 PNP Plus re-quotes to 20.06 bid (original price)

ArcaEx Book Priority

1. Order 1 − PNP Plus Buy 800 @ 20.06
2. Order 2 − Limit Buy 9,000 @ 20.04

The Exchange believes that the implementation of this order type would facilitate enhanced order interaction and foster price competition. The Exchange also believes that the proposal would promote a more efficient and effective market operation and enhance the investment choices available to investors over a broad range of trading scenarios. Finally, the Exchange believes that the proposed rule change would permit increased execution opportunities of PNP Orders and will prevent locking or crossing the national best bid or offer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act,[10] which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[6] *See* PCXE Rule 7.31(w) for the definition of ''PNP Orders.''

[7] Currently, under PCXE Rule 7.31(w), PNP Orders for Trade-Through Exempt Securities (as defined in PCXE Rule 7.37) are not cancelled if such orders would lock or cross the NBBO.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1)(B).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 Number SR–PCX–2004–12 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–PCX–2004–12. 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 PCX. 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–PCX–2004–12 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11648 Filed 5–21–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49718; File No. SR–PCX–2004–08]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Demutualization of the Pacific Exchange, Inc.

May 17, 2004.

I. Introduction

On February 10, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to convert the ownership of the existing Exchange from a non-stock, not-for-profit membership corporation into a for-profit stock corporation, and to convert the options trading rights of current PCX seats to Option Trading Permits. On March 29, 2004, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission received one comment letter in response to the proposed rule change.[4] On May 14, 2004, PCX filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of Proposed Rule Change

The current PCX, a Delaware non-stock, not-for-profit corporation, proposes a plan to ''demutualize,'' whereby it will be reorganized as a subsidiary (the ''reorganized PCX'' or ''reorganized Exchange'')[6] of a for-profit stock corporation, the stockholders of which initially will be the current owners of the outstanding authorized memberships of the current Exchange.[7] To effect the demutualization, a newly-formed Delaware stock corporation, PCX Holdings, Inc. (''PCX Holdings''), will become a holding company for the reorganized Exchange and its other operating subsidiaries. PCX Holdings has formed a wholly-owned subsidiary solely for the purpose of completing the merger, which will merge with and into the current PCX. This surviving entity, the reorganized Exchange, will be a wholly-owned subsidiary of PCX Holdings. The reorganized PCX, a non-stock corporation, will operate the options business of the current PCX and will have a separate Board of Directors. The reorganized PCX will retain the self-regulatory organization function for the options business as well as for its equities business subsidiary, PCX Equities, Inc. (''PCX Equities'' or ''PCXE''). According to the Exchange, the proposed demutualization will not affect PCXE's operations, governance structure, or rules.

Prior to the merger, the current Exchange will undergo a recapitalization whereby it will convert each of its 552 outstanding authorized memberships into two separate components: (1) A Class A membership interest representing each member's ownership interest in the current Exchange; and (2) a Class B membership interest representing options trading privileges on the current Exchange. As a result of the demutualization, current PCX members will receive one thousand (1,000) shares of voting common stock

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49451 (March 19, 2004), 69 FR 16305 (''Notice'').

[4] *See* Letter from John A. Brown, Pacific Exchange Member, to Jonathan G. Katz, Secretary, Commission, dated April 7, 2004 (''Brown Letter'').

[5] *See* Letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 13, 2004 (''Amendment No. 1''). *See* Section IV *infra* for a description of Amendment No. 1.

[6] In this Order, where the context requires differentiation between the PCX prior to the demutualization and the PCX after the demutualization, the existing membership organization is referred to as the ''current PCX'' or ''current Exchange,'' and the new entity, which will be a wholly-owned subsidiary of PCX Holdings, is referred to as the ''reorganized PCX'' or the ''reorganized Exchange.''

[7] The proposed rule change, as amended, includes: the Rules for the reorganized Exchange; the Certificate of Incorporation for PCX Holdings; the Bylaws for PCX Holdings; the Certificate of Incorporation for the reorganized Exchange; the Bylaws for the reorganized Exchange; and the deletion of the Constitution and the Certificate of Incorporation of the current Exchange.

in PCX Holdings in exchange for their Class A membership interest and, in addition, will receive an Options Trading Permit (''OTP'') [8] in the reorganized PCX in place of the Class B membership interest.

The common stock of PCX Holdings will represent an equity interest in the company and will have the traditional features of common stock, including dividend, voting, and liquidation rights.[9] Holders of common stock will be entitled to vote on all matters submitted to the stockholders for a vote, including the election of the Board of Directors of PCX Holdings, extraordinary transactions such as a merger, consolidation, dissolution or sale of all or substantially all of the assets of PCX Holdings, and certain changes to the Bylaws of PCX Holdings.

According to the Exchange, by restructuring its business as a stock corporation with business control and management vested in a Board of Directors, the entity will have greater flexibility to develop and execute strategies designed to improve its competitive position than it has under the current membership-cooperative structure. Further, the Exchange anticipates that by restructuring as a stock corporation, PCX management will be better able to respond quickly to competitive pressures and to make changes to its operations as market conditions warrant, without diminishing the integrity of its regulatory programs. Following the completion of the demutualization, PCX believes that the holders of common stock of PCX Holdings will retain, through their ownership of stock, their economic interest in its operating subsidiaries and ultimately will benefit from any improvement in the financial health of these entities resulting from the demutualization.

A. Corporate Structure

1. PCX Holdings, Inc.

Following the completion of the demutualization, PCX Holdings will be a for-profit stock corporation and will act as a holding company for the reorganized Exchange and its operating subsidiaries. PCX Holdings will provide management and corporate support to its subsidiaries. PCX Holdings, as the sole member of the reorganized PCX, will have the right to elect the Board of Directors of the reorganized PCX [10] and will have the right to vote on any proposal to merge the reorganized PCX with a third party, to sell a significant amount of the reorganized Exchange's assets to a third party, or to dissolve or liquidate the reorganized PCX. The Certificate of Incorporation and Bylaws of PCX Holdings will govern the activities of PCX Holdings.

a. Board of Directors

The Board of Directors of PCX Holdings shall consist of not less than seven (7) nor more than twelve (12) members, with the Board of Directors currently contemplated initially to consist of nine (9) members, including the Chief Executive Officer (''CEO'') of PCX Holdings and at least five (5) persons who shall not have any material business relationship with PCX Holdings or its affiliates, other than as an OTP Holder on the reorganized PCX. The authorized number of Directors shall be as determined from time to time upon the majority approval of the full Board of Directors. The CEO of PCX Holdings may be designated Chairman of the Board.

The current PCX Nominating Committee has consulted with the CEO of the current PCX and proposed a slate of Directors for the initial Board. This slate was part of the demutualization package sent to the members for a vote and will be put in place once the demutualization becomes effective. The PCX Holdings Nominating Committee will nominate subsequent Directors to the Board of Directors. The Nominating Committee shall nominate Directors for election at the annual meeting of stockholders. Such nominations shall comply with the Bylaws of PCX Holdings. The Chairman of the Board of Directors of PCX Holdings shall appoint the members of the PCX Holdings Nominating Committee.

The Board of Directors of PCX Holdings shall appoint the Chairman of the Board by majority vote. The Board of Directors shall be divided into three classes and serve in staggered terms of three years, as set forth in the Certificate of Incorporation. Each Director shall hold office until the expiration of the Director's term. If, however, there remains a vacancy on the Board of Directors (for example, the Director is not re-elected and the Director's successor is not elected or qualified), the Director shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. A Director may serve for any number of terms, consecutive or otherwise. Directors need not be stockholders of PCX Holdings.

b. Committees of PCX Holdings Board of Directors

PCX Holdings shall have a Board Audit Committee, Compensation Committee, and Nominating Committee. The Board of Directors of PCX Holdings may, by resolution passed by a majority of the Directors in office, establish one or more additional committees (''PCX Holdings Board Committees''). Any such PCX Holdings Board Committee, to the extent provided in the resolution of the Board, shall have and may exercise all the power and authority of the Board of Directors for direction and supervision of the management of the business and affairs of PCX Holdings. No such PCX Holdings Board Committee, however, shall have power or authority to amend the Certificate of Incorporation or the Bylaws, adopt an agreement of merger or consolidation, recommend to the stockholders the sale, lease, or exchange of all or substantially all of PCX Holdings' property and assets, recommend to the stockholders a dissolution of PCX Holdings or a revocation of a dissolution, elect a Director or elect or remove an officer, and, unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

c. Management

The officers of PCX Holdings shall include the Chairman of the Board of Directors, CEO, Secretary, and such other officers as are desirable for the conduct of the business of the corporation in the opinion of the CEO. The Chairman of the Board of Directors shall appoint officers of PCX Holdings, other than the Chairman of the Board of Directors and the CEO. The same person may hold any two or more offices. The officers of PCX Holdings will manage the business and affairs of PCX Holdings, subject to the oversight of the Board of Directors.

d. Shareholder Restrictions

The Certificate of Incorporation and Bylaws of PCX Holdings place certain restrictions on the ability to transfer and own the stock of PCX Holdings. For a period of 30 days following the effective date of the demutualization, PCX

[8] *See* PCX Rule 1.1(p) (definition of ''OTP''; *see also* PCX Rule 1.1(q) (definition of ''OTP Holder'') and PCX Rule 1.1(r) (definition of ''OTP Firm'').

[9] According to the Exchange, it does not currently anticipate that PCX Holdings will pay dividends on its common stock in the immediate future. The Exchange represents that, in the event that a dividend is declared, any revenues received by the reorganized PCX from regulatory fees or regulatory penalties will be applied only to fund the legal, regulatory, and surveillance operations of the reorganized PCX, and will not be used to pay dividends to the holders of PCX Holdings common stock.

[10] This right is subject to Trading Permit Holders' right to nominate their candidates.

Holdings stockholders will not be permitted to sell their shares unless the Board of Directors of PCX Holdings waives the transfer restriction. Regardless of whether such transfer restriction is waived, PCX Holdings stockholders will remain subject to the ownership and voting concentration limits and minimum lot transfer provisions described below.

No person (''Person''), either alone or together with its related persons (''Related Persons''),[11] may own shares constituting more than forty percent (40%) of the outstanding shares of capital stock of PCX Holdings.[12] This provision can be waived by an amendment to the Bylaws of PCX Holdings approved by the Board, subject to the Board having determined that such Person is not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act),[13] and the amendment being approved by the Commission. No trading permit holder of the reorganized PCX or equities trading permit holder of PCX Equities, either alone or together with its Related Persons, may own shares constituting more than twenty percent (20%) of the outstanding shares of common stock of PCX Holdings.[14] Any Person, either alone or together with its Related Persons, that at any time owns of record or beneficially, whether directly or indirectly, five percent (5%) or more of then outstanding shares of capital stock, who has the right to vote in the election of the Board of Directors of PCX Holdings, shall, immediately upon so owning five percent (5%) or more of the then outstanding shares of such stock, give the Board of Directors of PCX Holdings written notice of such ownership.[15]

No Person, either alone or together with its Related Persons, may vote, possess the right to vote or cause the voting of shares representing more than twenty percent (20%) of the issued and outstanding capital stock of PCX Holdings.[16] This provision can be waived by an amendment to the Bylaws of PCX Holdings approved by the Board of Directors, subject to the Board of Directors having determined that such person is not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act), and the amendment being approved by the Commission.

If any stockholder purports to vote, or sell, transfer, assign or pledge any shares to any person other than PCX Holdings in a transaction that would violate the transfer restrictions and voting and ownership concentration limits, then PCX Holdings shall record on its books the transfer of only that number of shares that would not violate these provisions and shall treat the remaining shares as owned by the purported transferor for all purposes, including, without limitation, voting, payment of dividends, and distributions.[17] In addition, if any stockholder purports to vote, or sell, transfer, assign or pledge any shares to any person in a transaction that would violate the transfer restrictions and voting and ownership concentration limits, then PCX Holdings shall have the right to redeem such shares at a price equal to the par value thereof, upon the approval of the PCX Holdings Board of Directors.[18]

Unless otherwise approved by the CEO of PCX Holdings, transfers of shares of the capital stock of PCX Holdings may be made only in minimum lots of 1,000 shares for a period of one year after the demutualization and thereafter in minimum lots of 100 shares.[19] Holders of PCX Holdings capital stock will have no redemption or preemptive rights. However, PCX Holdings may redeem shares of its capital stock acquired in violation of the transfer restrictions and ownership and voting concentration limits contained in its Certificate of Incorporation for a price per share equal to the par value thereof, upon the approval of the PCX Holdings Board of Directors.

In the case of transactions relating to PCX Holdings, a merger, consolidation, sale of all or substantially all of the assets, or dissolution must be approved by an affirmative vote of at least a majority of the outstanding shares.[20]

A merger, asset sale, or other business combination with a person who, together with affiliates and associates, owns or controls fifteen percent (15%) or more of the voting stock of PCX Holdings (''interested stockholder'') during the three-year period after the date that the person became an interested stockholder will require approval by at least two-thirds of the outstanding voting stock of PCX Holdings, which is not owned by the interested stockholder, and the prior approval of the Board of Directors of PCX Holdings.[21]

e. Self-Regulatory Functions and Oversight

There are various provisions in the Bylaws of PCX Holding that are designed to protect the independence of the self-regulatory function of the reorganized Exchange or to clarify the Commission's oversight responsibilities.

Under the Bylaws of PCX Holdings, PCX Holdings must give due regard to the preservation of the independence of the self-regulatory function of the reorganized PCX and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of the reorganized PCX relating to its regulatory functions or the structure of the market which it regulates or which would interfere with the ability of the reorganized PCX to carry out its responsibilities under the Act.[22] Moreover, all books and records and the information contained therein of the reorganized PCX reflecting confidential information pertaining to the self-regulatory function of the reorganized PCX, which shall come into the possession of PCX Holdings, shall be retained in confidence by PCX Holdings and its Board of Directors, officers, employees, and agents, and shall not be used for any non-regulatory purposes.[23]

PCX Holdings Bylaws provide that, to the extent that they are related to the activities of the reorganized Exchange, the books, records, premises, officers, directors, agents and employees of PCX Holdings are deemed to be the books, records, premises, officers, directors, agents, and employees of the reorganized Exchange for purposes of and subject to oversight pursuant to the Act.[24]

In addition, pursuant to PCX Holdings Bylaws, PCX Holdings and its officers,

[11] *See* PCX Holdings Certificate of Incorporation, Article 9, Section 1(b)(iv) for definitions of the terms ''Person'' and ''Related Persons.''

[12] PCX Holdings Certificate of Incorporation, Article 9, Section 1(b)(i).

[13] 15 U.S.C. 78c(a)(39).

[14] PCX Holdings Certificate of Incorporation, Article 9, Section 1(b)(ii).

[15] PCX Holdings Certificate of Incorporation, Article 9, Section 1(b)(iii).

[16] PCX Holdings Certificate of Incorporation, Article 9, Section 1(c).

[17] PCX Holdings Certificate of Incorporation, Article 9, Section 2.

[18] PCX Holdings Certificate of Incorporation, Article 9, Section 3.

[19] PCX Holdings Bylaws, Article 6, Section 6.07.

[20] PCX Holdings Bylaws, Article 2, Section 2.06(b). PCX represents, however, that under Delaware law this provision would not be applicable if such interested stockholder owned at least 85% of the voting stock of PCX Holdings outstanding at the time the transaction commences, excluding certain shares. Telephone conversation between Mai Shiver, Acting Director and Senior Counsel, PCX, and Frank N. Genco, Attorney, Division, Commission, on March 3, 2004.

[21] PCX Holdings Bylaws, Article 2, Section 2.06(b).

[22] PCX Holdings Bylaws, Article 3, Section 3.15.

[23] *Id.*

[24] PCX Holdings Bylaws, Article 7, Section 7.03.

directors, employees and agents, by virtue of their acceptance of such position, are deemed to irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the Commission, and the Exchange for the purposes of any suit, action or proceedings pursuant to the U.S. federal securities laws and the rules and regulations thereunder, arising out of, or relating to, the activities of the reorganized Exchange.[25] Further, PCX Holdings and its officers, directors, employees and agents, by virtue of their acceptance of any such position, are deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.[26] Moreover, PCX Holdings Bylaws provide that the officers, directors, employees and agents of PCX Holdings, by virtue of their acceptance of such position, are deemed to agree to cooperate with the Commission and the reorganized Exchange in respect of the Commission's oversight responsibilities with respect to the Exchange and the self-regulatory functions and responsibilities of the Exchange.[27]

Finally, PCX Holdings Certificate of Incorporation and Bylaws provide that, before any amendment to or repeal of a provision of the Certificate of Incorporation or Bylaws, respectively, shall be effective, it must be submitted to the Board of Directors of the reorganized Exchange and if that Board determines that the amendment or repeal of such provision must be filed with the Commission before it may be effective, the amendment or repeal of such provision shall not be effective until it is filed with the Commission.[28]

2. Reorganized PCX

The reorganized PCX will be a wholly-owned subsidiary of PCX Holdings that will continue to be a non-stock membership corporation with its own Board of Directors. PCX Holdings will be the sole member of, and, as such, will have one hundred percent (100%) voting control over the reorganized PCX (''Holding Member'').[29] Only the Holding Member will have any right to take part in the ownership of the Exchange and will be the Exchange's sole Corporate Member.[30] The reorganized PCX will retain the self-regulatory organization function with respect to the members of the current Exchange. PCX Equities will continue to be a wholly-owned subsidiary of the reorganized PCX. OTP Holders (as well as Exchange Trading Permit (''ETP'') Holders of PCX Equities) will have the right to representation on the Board of Directors of the reorganized PCX. The Board of Directors of the reorganized PCX also will have the right to amend the Bylaws of the reorganized PCX.

a. Governing Documents and PCX Rules

The proposed PCX Certificate of Incorporation, PCX Bylaws, and PCX Rules will govern the activities of the reorganized PCX. Proposed PCX Rules 1 through 3 relate to qualifications for OTPs and corporate governance.[31] The reorganized PCX's Rules and Bylaws will reflect the status of the reorganized Exchange as a wholly-owned subsidiary of PCX Holdings, under management of the reorganized PCX Board of Directors and its designated officers, and with self-regulatory responsibilities pursuant to PCX's registration under Section 6 of the Act.[32]

b. Board of Directors

The Board of Directors shall consist of not less than eight (8) or more than twelve (12) Directors, with the Board of Directors to consist initially of ten (10) Directors, including the CEO of PCX Holdings. The authorized number of Directors shall be as determined from time to time by the Board of Directors. At least fifty percent (50%) of the Directors will be persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the reorganized PCX or its affiliates (''Public Directors'').[33] At least twenty percent (20%) of the Directors shall consist of individuals nominated by the trading permit holders, with at least one Director nominated by the ETP Holders[34] of PCX Equities, Inc. and with at least one Director nominated by the OTP Holders of the reorganized PCX (collectively the ''Permit Holder Directors''). The exact number of Public Directors and Permit Holder Directors shall be determined from time to time by the Board of Directors, subject to the percentage restrictions described in proposed Article III, Section 3.02(a) of the reorganized PCX's Bylaws. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

The initial Directors of the reorganized Exchange shall consist of individuals nominated by the Nominating Committee of the current PCX in consultation with the CEO and shall be approved by the Board of Governors of the current PCX. At the first annual meeting and at each subsequent annual meeting of the Holding Member, except as otherwise provided by the reorganized PCX's Bylaws, the Holding Member shall elect Directors to serve until the next annual meeting or until their successors are elected and qualified. The Board of Directors shall appoint the Chairman of the Board by majority vote.

Each Director shall hold office for a term that expires at the annual meeting of the Holding Member following his or her election, provided that if he or she is not re-elected and his or her successor is not elected and qualified at the meeting and there remains a vacancy on the Board of Directors, he or she shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation, or removal. A Director may serve for any number of terms, consecutive or otherwise.

c. Committees of the Board of Directors

The reorganized PCX Board Committees shall consist of the following: (1) A Board Appeals Committee; (2) a Regulatory Oversight Committee; (3) an Audit Committee; and (4) a Compensation Committee. The Board of Directors may, by resolution passed by a majority of the Directors in

[25] PCX Holdings Bylaws, Article 7, Section 7.04.

[26] *Id.*

[27] PCX Holdings Bylaws, Article 7, Section 7.05. The Commission notes that the staff of the Exchange has indicated that it would present to the Board of Directors of PCX Holdings for its approval a proposed new Bylaws provision stating that PCX Holdings would take such action as is necessary to insure that its officers, directors and employees consent to the applicability of Sections 7.03 and 7.04 of the Bylaws with respect to Exchange-related activities. Letter from Kathryn Beck, Senior Vice President, General Counsel, Corporate Secretary and Chief Regulatory Officer, PCX, to Elizabeth King, Associate Director, Division, Commission, dated May 13, 2004.

[28] PCX Holdings Certificate of Incorporation, Article 14, and PCX Holdings Bylaws, Article 7, Section 7.06.

[29] The term ''Holding Member'' is defined in PCX Bylaws, Article II, Section 2.01. Pursuant to this provision of the PCX Bylaws, the reorganized PCX is a non-stock corporation consisting of a sole member, which is PCX Holdings (also referred to as the Holding Member).

[30] Under the reorganized PCX's Certificate of Incorporation, Corporate Member refers to any member of the Exchange within the meaning of Section 102(4) of the General Corporation Law of the State of Delaware.

[31] *See* Section II.C. *infra* for a description of the Rules of the reorganized PCX.

[32] 15 U.S.C. 78f.

[33] PCX Bylaws, Article III, Section 2(a).

[34] *See* PCXE Rule 1.1(n) for a definition of ''ETP Holder''.

office, establish one or more additional committees (''Board Committees''), each committee to consist of one or more Directors. Each Board Committee shall be composed of at least fifty percent (50%) Public Directors. Each Board Committee, to the extent provided in the resolution of the Board creating the committee, shall have and may exercise all of the power and authority of the Board of Directors for direction and supervision of the management of the business and affairs of the reorganized Exchange, and may authorize the seal of the Exchange to be affixed to all papers that may require it. No Board Committee, however, shall have power or authority to amend the Certification of Incorporation or the Bylaws, adopt an agreement of merger or consolidation, recommend to the Holding Member the sale, lease or exchange of all or substantially all of the Exchange's property and assets, recommend to the Holding Member a dissolution of the Exchange or a revocation of a dissolution, elect a Director, or elect or remove an officer; and unless the resolution expressly so provides, no Board Committee shall have the power or authority to declare a dividend or to authorize the issuance of membership interests.

d. Nominating Committee

After the formation of the initial Board of Directors, the Nominating Committee of the Board of Directors of PCX Holdings will nominate Directors for election to the Board of Directors of the reorganized PCX at the annual meeting of the Holding Member. Such nominations shall comply with the Bylaws and Rules of the reorganized PCX. The reorganized PCX Nominating Committee will nominate the OTP Holder nominee(s) to the Board of Directors. The selection process for the OTP Holder nominee(s) differs from the selection process for the ETP Holder nominee.[35] Specifically, after the nomination by petition period has closed, the Board of Directors of PCX Holdings shall have ten (10) business days to object to the nomination of any or all of the OTP Holder nominee(s). The Board of Directors of PCX Holdings may, in its sole discretion, object to the nomination of any or all of the OTP Holder nominee(s) if the nominee(s) have been disciplined by any securities self-regulatory organization or the nominee would be subject to statutory disqualification within the meaning of Section 3(a)(39) of the Act. Any nominee who is objected to by the Board of Directors of PCX Holdings is not eligible to be considered as a nominee or petition candidate until the expiration of the current term of the Board of Directors. If the Board of Directors of PCX Holdings objects to all of the proposed nominees, the Nominating Committee shall publish the name of an eligible alternative nominee by the later of ten (10) business days after the Board of Directors of PCX Holdings notifies the Secretary of the reorganized Exchange of their objection to the proposed nominee(s) or sixty-five days prior to the expiration of the term of the Directors. If the Board of Directors of PCX Holdings objects to all of the original nominees, the above-noted process shall continue with all of the same deadlines until the Nominating Committee nominates a nominee that is not objected to by the Board of Directors of PCX Holdings.

According to PCX, the purposes for allowing the Board of Directors of PCX Holdings to object to an OTP Holder nominee(s) are: (1) To accord PCX Holdings, as sole member of the reorganized PCX, the voting rights normally provided to a member of a membership organization; and (2) to provide the Board of Directors of PCX Holdings the ability to object to the nomination of particular individuals that, for various reasons, would be inappropriate as a director of a self-regulatory organization. PCX represents that, in both of the above circumstances, OTP Holders will still be afforded ''fair'' representation as required under the Act because, as a result of the process described above, a representative nominated by the OTP Holders will be selected.

e. Management

The Board of Directors shall elect such officers of the reorganized PCX, as it deems appropriate, which must include a Secretary, and which may include a President, a CEO, and, upon the recommendation of the CEO, any other officers as are desirable for the conduct of the business of the corporation. Any two or more offices may be held by the same person. The officers of the reorganized PCX will manage the business and affairs of the Exchange, subject to the oversight of the Board of Directors, and, in some cases, the approval of PCX Holdings as the sole member.[36]

f. Disciplinary Process

The reorganized PCX will retain the self-regulatory organization function for the options business of the PCX, as well as for its equities business subsidiary, PCX Equities. The proposed demutualization will not affect PCXE's current disciplinary process. The reorganized PCX's disciplinary process will be the same as the existing PCX disciplinary process and will be governed by an Ethics and Business Conduct Committee (''EBCC''). The reorganized PCX Board of Directors or a designee of the reorganized PCX will appoint the EBCC. The EBCC shall be made up primarily of OTP Holders and Allied Persons[37] of an OTP Firm. At least one member of the public shall serve on the EBCC.[38]

The Chief Regulatory Officer of the reorganized PCX or his or her staff will authorize the initiation of disciplinary actions and proceedings. As is presently the case, the EBCC will conduct hearings, render decisions, and impose sanctions. Decisions of the EBCC may be appealed for review to a Board Appeals Committee, which will be appointed by the reorganized PCX's Board of Directors and will include public members, the OTP representative(s), and the ETP representative(s) of the Board of Directors. Decisions of the Board Appeals Committee shall be subject to the review of the reorganized PCX's Board of Directors.

g. Other Committees

The proposed Bylaws and Rules of the reorganized PCX envision three Options committees—the Nominating Committee, the Ethics and Business Conduct Committee, and the OTP Advisory Committee.[39] However, the Board of Directors may, by resolution passed by a majority of Directors in the office, establish other Options committees, if it deems it appropriate.

[35] PCX represents that the ETP Nominee will be appointed to the reorganized PCX Board of Directors as required by the PCX/PCXE Shareholder Voting Agreement.

[36] According to the Exchange, under Delaware law events such as the sale of all or substantially all assets, a merger, or liquidation of the reorganized PCX may reuire the approval of the Board of Directors of PCX Holdings. Telephone conversation between Mai Shiver, Acting Director and Senior Counsel, and Steve Matlin, Senior Counsel, PCX, and Nancy J. Sanow, Assistant Director, and Frank N. Genco, Attorney, Division, Commission, on March 17, 2004 (''Telephone Conversation on March 17, 2004'').

[37] ''Allied Person''is defined in PCX Rule 1.1(b) as an individual, who is: (1) An employee of an OTP Firm who controls such firm; (2) an employee of an OTP Firm corporation who is a director or principal executive officer of such corporation; (3) an employee of an OTP Firm limited liability company who is a manager or a principal executive officer of such limited liability company; or (4) a general partner in an OTP Firm partnership.

[38] PCX represents that committees involved in the disciplinary process will remain unaffected by the demutualization.

[39] The OTP Advisory Committee shall act in an advisory capacity regarding rule changes related to disciplinary matters and trading rules. *See* PCX Rule 3.2(b)(3).

Except for the Nominating Committee, the Board of Directors of the reorganized PCX will appoint the members of all Options Committees for terms of one year. The CEO of the reorganized PCX will appoint the Chair and Vice Chair of each Options Committee. OTP Holders and public representatives may be appointed to serve on Options Committees.

h. Options Listings and Delistings

The management of the reorganized PCX will make all decisions with respect to listing and delisting options and related products in accordance with rules and standards comparable to those set forth in the current PCX Rules and used by the Option Listing Committee of the current PCX.

i. Regulation/Disciplinary Process

Following the demutualization, the reorganized PCX will operate as a national securities exchange registered under Section 6 of the Act.[40] For purposes of the Act, OTP Holders and OTP Firms will be deemed ''members'' of the reorganized PCX.

As a registered national securities exchange and self-regulatory organization, the reorganized PCX will continue to carry out its statutory responsibilities to enforce compliance by OTP Holders and OTP Firms (including ETP Holders of its equities business subsidiary, PCX Equities) with the provisions of the federal securities laws and the applicable Rules of the reorganized PCX and of PCX Equities. As the registered self-regulatory organization, the reorganized PCX will continue to have ultimate responsibility for the administration and enforcement of rules governing the options and equities business operations.

The reorganized PCX will continue to be required to approve any changes to the Rules and governing documents of PCX Equities and to file any such changes with the Commission pursuant to Section 19(b) of the Act[41] and Rule 19b-4 thereunder.[42]

j. National Market System Plans

PCX currently is a participant in various national market system (''NMS'') plans, including the Consolidated Tape Association (''CTA'') Plan, the Consolidated Quotation System (''CQS'') Plan, the Intermarket Trading System (''ITS'') Plan, the Options Price Reporting Authority (''OPRA''), the Options Intermarket Linkage (''Linkage'') Plan, and the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP'') Plan.[43] These plans are joint industry plans entered into by self-regulatory organizations for the purpose of addressing last sale reporting, quotation reporting, intermarket equities trading, options price reporting, and intermarket options trading, respectively. Following the completion of the demutualization, the reorganized PCX, in its continuing role as the self-regulatory organization, will continue to serve as the voting member of these NMS plans. For those plans that relate to equity trading (*i.e.*, the CTA Plan, the CQS Plan, the ITS Plan, and the Nasdaq UTP Plan) a PCX Equities representative will continue to serve as the reorganized PCX's representative with respect to dealing with these plans.[44] Similarly, the reorganized PCX expects that a representative of the reorganized PCX will serve as its representative with respect to those NMS plans that relate to options trading (*i.e.*, OPRA and Linkage).

3. PCX Equities

PCX Equities will be a wholly-owned stock subsidiary of the reorganized PCX. The proposed demutualization will not affect PCXE's operations, governance structure, or rules.

a. Agreements Between the Current PCX and PCX Equities

Currently, the PCX options operations and equities operations share certain infrastructure and personnel. After the completion of the demutualization, these shared assets will continue to be owned by the reorganized PCX and the shared personnel will continue to be employed by the reorganized PCX. In each case, however, PCX Equities will have access to those resources through inter-company agreements with the reorganized PCX. In particular, the reorganized PCX will continue to provide PCX Equities with certain management and support services and staff. The services provided are for administration, membership, technology, finance, accounting, human resources, and legal services. PCX represents that the agreement between the reorganized PCX and PCX Equities will allocate charges for these services and staff between the reorganized PCX and PCX Equities.

B. Option Trading Permits

1. Privileges Conferred by OTPs

The reorganized PCX will be authorized to issue OTPs that will entitle holders of the permits to trade options on the options trading facilities of the reorganized PCX, including the options trading floor, POETS,[45] PCX Plus,[46] or any other systems approved by the Board of Directors, as a Market Maker, Floor Broker or order-flow firm. OTP Holders may engage in trading of options in the same manner as currently practiced by PCX Members who trade on the options trading facility.[47]

An OTP does not grant its holder any right to trade securities on PCX Equities. Any OTP Holder that wishes to trade securities on PCX Equities must be approved for, and obtain an ETP pursuant to, the PCXE's application procedures.

OTP Holders will have limited voting rights and may nominate, through the Nominating Committee or by petition, at least one member to the reorganized PCX Board of Directors.

OTP Holders will hold six of the seven positions on the Nominating Committee. Subsequent nominations to the Nominating Committee will be made by the sitting Nominating Committee. The seventh position on the Nominating Committee will be a person from the public selected by the CEO of the reorganized PCX.

OTP Holders will not have any distribution or other ownership rights in

[40] 15 U.S.C. 78f.

[41] 15 U.S.C. 78s(b).

[42] 17 CFR 240.19b–4.

[43] Telephone conversation between Mai Shiver, Acting Director and Senior Counsel, PCX, and Frank N. Genco, Attorney, Division, Commission, on March 3, 2004, confirming that PCX is a participant in the Nasdaq UTP Plan.

[44] *Id.*

[45] Currently, PCX operates an electronic order routing and execution system called Pacific Options Exchange Trading System (''POETS''), and several other peripheral systems including the Pacific Options Processing System (''POPS'') and the Floor Broker Hand Held trading system, in conjunction with traditional open outcry trading with Floor Brokers and competing Market Makers.

[46] PCX Plus is the Exchange's electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes with size of members are consolidated for execution and/or display. This trading system includes the electronic communications network that enables registered Market Makers to enter orders/quotes with size and execute transactions from remote locations or the trading floor. See Securities Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving File No. SR–PCX–2002–36).

[47] PCX intends to simplify its membership rules by eliminating Automated System Access Privileges (''ASAPs''). ASAPs refer to a permit issued by the Exchange for effecting option transactions principally over an electronic or automated system such as POETS. Under current PCX Rule 1.14, an ASAP member that wishes to obtain electronic access to the Options Floor must be a registered broker-dealer and approved by the Membership Committee. To date, the Exchange has issued no ASAPs. Because the reorganized PCX proposes to issue OTPs, there will no longer be a need for two separate membership categories. Therefore, PCX represents that the rules related to ASAPs will be rescinded.

the reorganized PCX or PCX Holdings by virtue of their status as OTP Holders.

2. Number of OTPs

There will be no limit on the number of OTPs issued by the reorganized PCX.

3. Qualification for OTPs

The reorganized PCX will commence issuing OTPs once the demutualization is completed. Persons or entities that are registered broker-dealers and are not existing PCX members may be granted trading privileges on the reorganized PCX through an application process. OTP qualifications will be substantially the same as the current requirements for PCX membership.

The application process for applicants who are not current PCX members will be the same as is now required by PCX. The decision to grant or deny an application for trading privileges will be made by officers of the reorganized PCX (there will be no Membership Committee) and the denial of an application will be appealable to the reorganized PCX Board Appeals Committee.

4. Non-transferability of OTPs

OTPs will not be transferable by sale or lease, but they may be transferred by a firm holding an OTP between individuals within the same firm in accordance with the Rules of the reorganized PCX.

5. Cost of OTPs

Pursuant to the requirements of Section 19 of the Act,[48] PCX intends to set forth in a separate rule filing the fees for an OTP that will be assessed.

C. Rules of the Reorganized PCX

PCX represents that the majority of the Rules proposed to regulate the business conduct and practices of its OTP Holders, OTP Firms, and associated persons are closely patterned on PCX's existing Rules (with the exception of proposed PCX Rules 1 through 3). The reorganized Exchange's Rules contain changes to reflect the new structure whereby trading permits will be issued to persons or entities conducting business on the reorganized PCX. The discussion below indicates those Rules that reflect a significant departure from the current PCX Rules and, for those Rules that are closely patterned after existing PCX Rules, notes which current PCX Rules were used as a model and whether only minor conforming word changes and clean-up corrections were made.

[48] 15 U.S.C. 78s.

1. Summary of Rules of the Reorganized PCX

Following the demutualization, the reorganized PCX will implement, subject to certain revisions, the applicable trading rules and standards of the current PCX as they relate to the current options trading business. Rules 1 through 3 of the reorganized PCX, which relate to definitions, qualifications for OTPs, and corporate governance, reflect significant departures from existing PCX Rules. The remaining rules are substantially similar to the current Rules, unless noted otherwise. The following section discusses the Rules of the reorganized Exchange that are contained in the proposed rule change, as amended, and that will be implemented by the reorganized Exchange in conjunction with the demutualization.

a. PCX Rule 1—Definitions

PCX Rule 1 defines certain terms and references (*e.g.*, OTP Holder) used throughout the Rules, and is intended to ensure uniformity in the use of such terms. In conjunction with the demutualization and the issuance of the OTPs, the PCX has developed the following new terms and proposes to incorporate them into PCX Rule 1.

PCX Rule 1.1(h)—The term ''Exchange'' means the reorganized PCX, a Delaware corporation as described in the company's Certificate of Incorporation and Bylaws. The reorganized Exchange is a national securities exchange as that term is defined in Section 6 of the Act.[49]

PCX Rule 1.1(n)—The term ''Nominee'' means an individual who is authorized by an OTP Firm, in accordance with PCX Rule 2.4, to conduct business on the Exchange's Trading Facilities (as defined below) and to represent such OTP Firm in all matters relating to the Exchange. As long as a Nominee remains effective, the Nominee will have status as a ''member'' of the Pacific Exchange, as that term is defined in Section 3 of the Act.[50] A Nominee must agree to be bound by the Bylaws and Rules of the Exchange, and by all applicable rules and regulations of the Commission.

PCX Rule 1.1(p)—The term ''OTP'' refers to an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. An OTP may be issued to a sole proprietor, partnership, corporation, limited liability company, or other organization which is a registered broker or dealer pursuant to Section 15 of the Act,[51] and which has been approved by the Exchange.

PCX Rule 1.1(q)—The term ''OTP Holder'' refers to a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee. An OTP Holder must be a registered broker or dealer pursuant to Section 15 of the Act,[52] or a Nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities. An OTP Holder shall agree to be bound by the Bylaws and Rules of the Exchange, and by all applicable rules and regulations of the Commission. An OTP Holder shall not have ownership or distribution rights in the Exchange. An OTP Holder will have limited voting rights to nominate an OTP Holder to the Exchange's Board of Directors pursuant to proposed PCX Rule 3.2(b)(2)(C). An OTP Holder will have status as a ''member'' of the Pacific Exchange, as that term is defined in Section 3 of the Act.[53]

PCX Rule 1.1(r)—The term ''OTP Firm'' refers to a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities pursuant to and in compliance with these rules. An OTP Firm must be a registered broker or dealer pursuant to Section 15 of the Act.[54] An OTP Firm shall agree to be bound by the Certificate of Incorporation, Bylaws, and PCX Rules of the Exchange, and by all applicable rules and regulations of the Commission. An OTP Firm shall not have ownership or distribution rights in the Exchange. An OTP Firm will have limited voting rights to nominate an OTP Holder to the Exchange's Board of Directors pursuant to PCX Rule 3.2(b)(2)(C). An OTP Firm will have status as a ''member'' of the current PCX, as that term is defined in Section 3 of the Act.[55]

PCX Rule 1.1(y)—The terms ''self-regulatory organization'' and ''SRO'' has the same meaning as set forth in the provisions of the Act relating to national securities exchanges.

PCX Rule 1.1(aa)—The term ''Trading Facilities'' refers to the Exchange's facilities for the trading of options, office space provided by the Exchange

[49] 15 U.S.C. 78f.

[50] 15 U.S.C. 78c.

[51] 15 U.S.C. 78*o*.

[52] 15 U.S.C. 78*o*.

[53] 15 U.S.C. 78c.

[54] 15 U.S.C. 78*o*.

[55] 15 U.S.C. 78c.

to OTP Holders and OTP Firms in connection with their floor trading activities, and any and all electronic or automated order execution systems and reporting services provided by the Exchange to OTP Holders and OTP Firms.

b. PCX Rule 2—Option Trading Permits

PCX Rule 2, which describes the application process, the qualification requirements and other requirements for holding an OTP, is similar to the requirements and procedures now described in PCX Rule 1 of the current Exchange and certain sections of the Constitution of the current Exchange. However, as described below, certain substantive changes have been made to reflect the characteristics of the new OTPs. These substantive changes include the following:

PCX Rule 2.2—In accordance with PCX Rule 2.2, an OTP may be issued to an individual, partnership, corporation, limited liability company, or other organization that is a registered broker-dealer. As discussed under Section 1.1(p) of PCX Rule 1, an OTP will authorize its holder to trade options on any facility of the reorganized PCX, including the options trading floor, POETS, or PCX Plus, as a registered Market Maker, Floor Broker, or order flow firm. An OTP will not confer any rights to trade on the Archipelago Exchange, *i.e.,* the equities trading facility of PCX Equities. Any OTP Holder that wishes to trade securities on the Archipelago Exchange must be approved for and obtain a PCXE ETP pursuant to PCXE's standard application procedures.

PCX Rule 2.3—To be consistent with the approach taken with respect to seat ownership, under PCX Rule 2.3(b), all firms that directly own OTPs are required to designate a natural person to hold their OTPs (*i.e.,* the OTP Holder). Accordingly, whenever an OTP confers the right to vote (*e.g.*, election of the Nominating Committee, as discussed below), it is the OTP Holder, rather than the OTP Firm, who casts the vote. However, pursuant to PCX Rule 2.21(c) (as discussed below), the OTP Firm retains the right to replace the OTP Holder with another qualified Nominee employed by the OTP Firm at any time. Therefore, since the reorganized PCX will use revocable proxies to conduct its votes, OTP Firms will be able to effectively control the voting process with respect to the OTPs that they own in the same manner as PCX member firms control the voting process with respect to Nominees today.

PCX Rules 2.4, 2.5, and 2.6—PCX Rules 2.4, 2.5, and 2.6 would alter PCX's existing member approval process by authorizing the reorganized PCX management—in place of a Membership Committee—to approve or reject OTP applicants. As described in PCX Rule 2.4(g), in the event that the Exchange rejects an application, the applicant will have the opportunity to appeal the decision to the Exchange's Board Appeals Committee pursuant to proposed PCX Rule 10. Minor changes in terminology have been made to conform to the demutualization.

PCX Rule 2.21—As described in PCX Rule 2.21(a) and (b), unlike current PCX memberships, OTPs may not be purchased, sold, or leased. Therefore, the current Exchange's Rules 1.21 and 1.24 and sections of Rules 1.22 and 1.23 relating to the purchase, sale, or lease of memberships have been deleted from the reorganized PCX Rules. Under PCX Rule 2.21(c) of the reorganized Exchange, the only permissible transfers of OTPs are intra-firm transfers involving Nominees employed by the same firm. A new Nominee, unless he or she is a previously approved person or approved Allied Person [56] of the OTP Firm, shall provide all information required for the Exchange to conduct an investigation of the Nominee prior to his or her approval as a Nominee.

PCX Rule 2.22—Pursuant to PCX Rule 2.22, an OTP will terminate upon the occurrence of the permit holder's expulsion, suspension without reinstatement, death, declaration of incompetence, dissolution, winding up, or other cessation of business. An OTP Holder whose trading privileges are terminated must be current in all filings and payments of dues, fees, and charges. If the OTP Holder fails to be current as required, the Exchange retains jurisdiction over the permit holder until such time as the permit holder is current. In addition, an OTP that confers trading privileges on an OTP Firm will terminate when the named OTP Holder ceases to be an employee of the OTP Firm. In that event, the OTP Firm may nominate another employee as its Nominee OTP Holder. An OTP Firm upon which trading privileges are conferred shall continue to be responsible for all obligations, including, without limitation, dues, fees, and charges imposed by or due to the Exchange.

The Exchange represents that, other than the substantive changes discussed above and minor conforming word changes that reflect the demutualization, each section of PCX Rule 2 (except PCX Rule 2.21 and PCX Rule 2.22) is substantially the same as a relevant corresponding PCX Rule or Article of the Constitution.

c. PCX Rule 3—Organization and Administration

PCX Rule 3 sets forth the organization and governance structure of the reorganized PCX. PCX Rules 3.1 through 3.3 regarding Options and Board Committees were drafted using PCX and PCXE Rules of the current Exchange as a starting point.[57] Under the rules of the reorganized Exchange, the use of a ''member'' committee structure will be reduced substantially.

PCX Rule 3.1—PCX Rule 3.1 states that the Board of Directors may establish: (1) One or more Board committees consisting of one or more Directors of the Exchange; and (2) one or more Options committees consisting of people other than Directors. As discussed in more detail below, although the reorganized PCX's Board may establish additional Options Committees under this rule, the Bylaws and Rules of the reorganized PCX currently envision solely a Nominating Committee, an Ethics and Business Conduct Committee, and an OTP Advisory Committee. Similarly, although the Board may establish additional Board Committees, the Rules currently envision only a Board Appeals Committee, a Regulatory Oversight Committee, an Audit Committee, and a Compensation Committee.

PCX Rule 3.2(a)—PCX Rule 3.2(a) establishes the substantive and procedural rules for an Options Committee conducting meetings and exercising its authority. In particular, PCX Rule 3.2(a), which is similar to rules and procedures of the current PCX and of PCXE, discusses quorums, voting, conference call meetings, vacancies, the removal and resignation of committee members, and eligibility for and appointment to Options Committees, interested persons and subcommittees.

Under this rule, OTP Holders and Allied Persons [58] of OTP Firms as well as public representatives may be appointed to serve on Options Committees. No more than one person affiliated with the same OTP Firm will be eligible for service on the same Options Committee. PCX Rule 3.2(a) vests authority in the Board of Directors or such other designee of the reorganized PCX to appoint the members of Options Committees (other

[56] *See* note 37 *supra* for a definition of Allied Person.

[57] *See* Rules 11.1(a)–(b), 11.2(a)–(b), 11.3–11.5, 11.6(b); and 11.8(d) of the current Exchange; Articles II–IV of the current Exchange's Constitution; and PCXE Rule 3.

[58] *See* note 37 *supra*.

than the Nominating Committee). The CEO or such other designee of the reorganized PCX will appoint the Chair and Vice Chair of each Options Committee (other than the Nominating Committee).

PCX Rule 3.2(b)(1)—PCX Rule 3.2(b)(1) describes the functions and authority of the Ethics and Business Conduct Committee (''EBCC''). The reorganized PCX's disciplinary process will be similar to the existing PCX disciplinary process and will be governed by the EBCC. Pursuant to the proposed rule, the EBCC would have the following functions and authority: (1) Examine the business conduct and financial condition of OTP Holders, OTP Firms, and associated persons; (2) conduct hearings and render decisions in summary disciplinary actions and proceedings; (3) impose appropriate sanctions of expulsion, suspension, fine, censure, or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed; and (4) require the production of detailed financial reports of an OTP Holder or OTP Firm and such other operational reports as it may deem relevant.

In addition, under this rule, the EBCC will have the authority to examine and subsequently suspend an OTP Firm or OTP Holder if the person or entity is in violation of PCX Rule 4. Any such suspension is subject to review by the Board Appeals Committee. Such review shall not operate as a stay of the suspension unless specifically allowed by the Board. A person or firm that experiences a reversal of the suspension imposed by the Committee shall be prohibited from instituting a lawsuit against the Exchange or the Committee members.

Finally, decisions of the EBCC or sanctions imposed by the regulatory staff relating to disciplinary proceedings may be appealed to the Board Appeals Committee in accordance with PCX Rule 10.

PCX Rule 3.2(b)(2)—PCX Rule 3.2(b)(2) describes the characteristics and function of the Nominating Committee. Specifically, the Nominating Committee shall have seven members consisting of six OTP Holders and one public representative. Members of the Nominating Committee will be nominated in accordance with the procedures set forth in proposed PCX Rule 3.2(b)(2). This Rule states that, prior to the expiration of its term, the Nominating Committee shall publish a slate of six eligible nominees for the committee. OTP Holders may submit a petition to the Exchange in writing to nominate additional eligible candidates to fill the OTP positions. Upon written petition of the lesser of thirty-five or ten percent (10%) of the OTP Holders in good standing, the additional candidates shall also be nominated by the Nominating Committee. The CEO shall appoint a person from the public to fill the public position on the Nominating Committee.

If there are more than six nominees to fill the OTP Holder positions on the Nominating Committee, the Nominating Committee shall submit the nominees to the OTP Holders for election. Each OTP Holder in good standing shall be permitted to vote for up to six nominees and the six nominees receiving the most votes shall fill the OTP positions. Tie votes shall be decided by the Board of Directors at its first meeting following the election. If there are only six nominees to fill the OTP Holder positions, those six nominees shall be deemed elected to the Nominating Committee.

This Nominating Committee will nominate at least one nominee for the reorganized PCX Board. Such nominee may be an OTP Holder or Allied Person of an OTP Firm. OTP Holders may submit a written petition to the Exchange to nominate additional eligible candidates to fill the OTP Holder position and, upon written petition of the lesser of thirty-five (35) or ten percent (10%) of OTP Holders in good standing, the additional person(s) shall also be nominated by the Nominating Committee.

After the nomination by petition period has closed, the Board of Directors of PCX Holdings shall have ten (10) business days to object to the nomination of any or all of the OTP Holder nominee(s). The Board of Directors of PCX Holdings may in its sole discretion object to the nomination of any or all of the OTP Holder nominee(s) if the nominee(s) have been disciplined by any securities SRO or the nominee would be subject to statutory disqualification within the meaning of Section 3(a)(39) of the Act. Any nominee who is objected to by the Board of Directors of PCX Holdings is not eligible to be considered as a nominee or petition candidate until the expiration of the current term of the Board of Directors. If the Board of Directors of PCX Holdings objects to all of the proposed nominees, the Nominating Committee shall publish the name of an eligible alternative nominee by the later of ten (10) business days after the Board of Directors of PCX Holdings notifies the Secretary of the reorganized Exchange of their objection to the proposed nominee(s) or sixty-five (65) days prior to the expiration of the term of the Directors. If the Board of Directors of PCX Holdings objects to all of the original nominees, the above-noted process will continue with all of the same deadlines, until the Nominating Committee nominates a nominee that is not objected to by the Board of Directors of PCX Holdings.

If there are two or more OTP Holder nominees for the Board of Directors of the reorganized PCX, the Nominating Committee shall submit the contested nomination to the OTP Holders for selection. Each OTP Holder may select one nominee for the contested seat on the Board of Directors. With respect to the contested positions, the nominee for the Board of Directors selected by the OTP Holders, shall be submitted by the Nominating Committee to the Board of Directors. Similarly, the Nominating Committee shall submit an uncontested nominee to the Board of Directors. Tie votes shall be decided by the Board of Directors at its first meeting following the election.

PCX Rule 3.2(b)(3)—OTP Advisory Committee will be responsible for advising the management of the reorganized PCX regarding rule changes relating to disciplinary matters and trading rules. The OTP Advisory Committee will be made up of OTP Holders. According to PCX, attempts shall be made to have diverse OTP Holder representation of different constituencies on the Committee.

PCX Rule 3.2(c)—Under this Rule, each Options Committee will have such other powers and duties as delegated to it by the Board of Directors. Each Options Committee is subject to the control, review, and supervision of the Board of Directors.

PCX Rule 3.3(a)(1)—PCX Rule 3.3(a)(1) describes the functions and authority of the Board Appeals Committee. The Board Appeals Committee will be composed of the OTP Director(s), the ETP Director(s), and all of the Public Directors of the reorganized PCX. Board Appeals Committee Panels (''Appeals Panels'') will be composed of members of the Board Appeals Committee. An Appeals Panel will be composed of no less than three (3), but no more than five (5) individuals.[59] The Appeals Panel will conduct reviews of matters subject to the applicable provisions of proposed PCX Rule 3.2(b)(1)(C) or 10. Each Appeals Panel will contain at least one Public Director and at least one Director

[59] The body conducting the review, either the Board Appeals Committee itself or the Appeals Panel, is also referred to in the PCX Rules as the Review Board.

that is an OTP Holder or Allied Person of an OTP Firm. Subject to PCX Rule 10, decisions of the Board Appeals Committee will be subject to the review of the Board of Directors. The decision of the Board of Directors will constitute the final action of the Exchange, unless the Board remands the proceedings.

PCX Rule 3.3(a)(2)—PCX Rule 3.3(a)(2) describes the functions and authority of the Regulatory Oversight Committee (''ROC''). The ROC shall ensure: (1) the independence of Exchange regulation; (2) that the Exchange provides adequate resources to properly fulfill its SRO regulatory obligations; and (3) that Exchange management fully supports the execution of the regulatory process. The ROC shall be composed of all of the Public Directors of the reorganized PCX.

PCX Rule 3.3(a)(3)—PCX Rule 3.3(a)(3) describes the functions and authority of the Audit Committee. The Audit Committee shall be made up of at least three (3) Directors of the reorganized PCX. All members of the Audit Committee shall be Public Directors and at least one member of the Audit Committee shall have accounting or related financial management expertise, as the reorganized PCX Board of Directors interprets such qualification in its business judgment. The Audit Committee shall conduct an annual review with the independent auditors to determine the scope of their examination and the cost thereof. The Audit Committee shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The Audit Committee shall review the annual reports submitted both internally and externally, and take such action with respect thereto as it may deem appropriate. The Audit Committee shall also recommend independent public accountants as auditors of the Exchange and its subsidiaries to the reorganized PCX Board of Directors.

PCX Rule 3.3(a)(4)—PCX Rule 3.3(a)(4) describes the functions and authority of the Compensation Committee. The Compensation Committee shall be made up of at least three (3) Directors of the reorganized PCX Board of Directors. Only one (1) non-Public Director may serve on the committee. The Compensation Committee shall review and approve corporate goals and objectives relevant to the CEO's Compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation. The Compensation Committee also shall make recommendations to the Board of Directors of the reorganized PCX with respect to the design of incentive compensation and equity-based plans.

PCX Rule 3.6—Subject to minor word changes, PCX Rule 3.6 regarding surveillance agreements is the same as PCX Rule 14.1 of the current Exchange.

PCX Rules 3.7—3.9—Other than minor conforming word changes, PCX Rules 3.7 through 3.9 are the same as Article XIV, Section 1 of the current Exchange's Constitution. Under these Rules, the reorganized PCX Board may impose reasonable fees, assessments, charges, or fines to be paid by OTP Holders or OTP Firms. The Exchange represents that, prior to implementing the demutualization, it will file with the Commission a rule proposal to change its Schedule of Fees and Charges for services provided by the reorganized PCX.

d. PCX Rule 4—Capital Requirements, Financial Reports, and Margins

PCX Rule 4, which sets forth the net capital, financial reporting, and margin requirements for OTP Holders and OTP Firms, has been adapted from PCX Rule 2 of the current Exchange. Only minor conforming changes in terminology and clean-up corrections have been made to the Rules of the current Exchange.

e. PCX Rule 5—Listings

PCX Rule 5 is comprised of the General Provisions and Definitions, Underlying Securities, Stock Index Options, Flexible Exchange Options, Buy-Write Option Unitary Derivatives (BOUNDs), and Portfolio Depositary Receipts. This Rule has been adapted from Rules 3, 7, and 8 of the current PCX. Only minor conforming changes in terminology and clean-up corrections have been made to the Rules of the current Exchange.

f. PCX Rule 6—Options Trading

Other than the substantive changes discussed below and minor conforming word changes that reflect the demutualization, PCX Rule 6 is unchanged from Rule 6 of the current Exchange, which governs options trading. There are two notable modifications to the Exchange's options trading rules. First, the Exchange seeks to confer jurisdiction currently held by the Options Floor Trading Committee to the Exchange. Second, the Exchange proposes to confer jurisdiction currently held by Floor Officials to either Trading Officials or the Exchange.[60]

g. PCX Rule 7—General Trading PCX Rules

PCX Rule 7, which pertains to general trading rules that address matters such as trading hours and access to trading facilities has been adapted from Rule 4 of the current Exchange. Only minor conforming changes in terminology have been made to the provisions of Rule 4 of the current Exchange.

h. PCX Rule 9—Conducting Business With the Public

PCX Rule 9, which governs how OTP Holders and OTP Firms must conduct business with the public, is patterned after Rule 9 of the current PCX. Except for minor changes in terminology and clean-up corrections, this Rule is substantially the same as Rule 9 of the current Exchange.

i. PCX Rule 10—Disciplinary Proceedings, Other Hearings, and Appeals

PCX Rule 10 describes the disciplinary process for the reorganized PCX. The reorganized PCX's disciplinary process will be similar to the current PCX's disciplinary process (including summary sanction procedures under the Minor Rule Plan) and will be governed by the EBCC. Therefore, aside from conforming word changes and the substantive changes discussed below, PCX Rule 10 will be closely modeled after Rule 10 of the current Exchange.

PCX Rules 10.8(a)—This rule defines and clarifies the procedures and timetables for the respondent to follow when requesting the review of a decision by the Conduct Panel appointed by the EBCC.[61] The respondent may appeal to the Board at any time within fifteen (15) calendar days after the decision has been served.

PCX Rule 10.8(b)—This rule provides that the Board Appeals Committee may appoint an Appeals Panel to review the decision rendered by the Conduct Panel. The composition of the Appeals Panel will be determined by the Board Appeals Committee in accordance with proposed PCX Rule 3.3(a)(1)(A). Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed

[60] Initially, Trading Officials will be acting as officials of the Exchange as opposed to members of the Options Floor Trading Committee. Over time, the Exchange expects that the PCX's regulatory staff will be primarily responsible for the general supervision of the conduct and dealings of OTP Holders, OTP Firms, and Associated Persons on the options trading facility.

[61] The Exchange is proposing to make certain technical changes throughout the text of the PCX Rule 10 for clarification purposes, *e.g.,* adding references to calendar days.

by the parties. The standard of review shall be *de novo.*

PCX Rules 10.14(a)–(m)—Rules 11.7(a)–(m) of the current Exchange, which pertain to appeals for non-disciplinary matters, will be incorporated into PCX Rule 10.14. PCX Rule 10.14 provides the procedures for persons aggrieved by any of the following actions taken by the reorganized Exchange to apply for an opportunity to be heard and to have the action reviewed. These actions are: (1) Denial of an OTP; (2) the barring of any person from becoming associated with an OTP Firm; (3) the suspension or cancellation of OTP trading privileges; (4) the prohibition or limitation with respect to access to services provided by the Exchange, or the access to services of any OTP Firm taken pursuant to the Bylaws, or Rules or procedures of the Exchange; (5) actions taken pursuant to PCX Rules 6.37 (Obligations of Market Makers), 6.82(e) or (f) (regarding allocation or reallocation of option issues), and 6.82(g) (regarding qualification or disqualification of an LMM); or (6) the denial of an applicant for registration as a Market Maker, Lead Market Maker, or Floor Broker (PCX Rules 6.33, 6.44 and 6.82(b)(1)). The provisions of this Rule shall not apply to reviews of disciplinary action, for which review is already provided within proposed PCX Rule 10, and actions in Arbitration.

j. PCX Rule 11—Business Conduct

PCX Rule 11 consolidates various options-related rules that address business practices, ethical standards, and prohibited acts contained in Rules 2 and 4 and the Constitution of the current Exchange. Other than minor conforming word changes that reflect the demutualization, each section of PCX Rule 11 is substantially the same as the relevant corresponding rule or Article of the current PCX.

k. Rule 12—Arbitration

PCX Rule 12, the arbitration rule, has been patterned closely after Rule 12 of the current Exchange. Only minor changes in terminology have been made to conform this rule to the circumstances of the demutualization.

l. PCX Rule 13—Expulsion, Suspension, and Reinstatement

PCX Rule 13 clarifies, restates, and reorganizes rules and procedures of the current Exchange regarding certain suspensions, cancellations, bars, and prohibitions on access to the reorganized PCX's services and facilities. The following describes provisions of Rule 13 and how they differ from Rule 13 of the current Exchange, where applicable.

PCX Rules 13.1(a)–(b)—PCX Rules 13.1(a)–(b) incorporate a modified version of Article X, Sections 1(a) and (b) of the current Exchange's Constitution. This rule requires an OTP Holder or OTP Firm to give prompt written notice to the Exchange if it is expelled or suspended from any SRO, encounters financial difficulty or operating inadequacies, fails to perform contracts or becomes insolvent, or if any associated person of such OTP Firm is similarly expelled or suspended by an SRO.

PCX Rules 13.2(a)–(b)—PCX has reorganized and simplified its rules relating to summary and non-summary disciplinary proceedings. Rule 13.2(a)–(b) has been adapted from the NASD Rule 9510 Series and Article X, Section 2 and Article XI, Section 3(c) of the current Exchange's Constitution. Rule 13.2(a)–(b) is intended to eliminate any potential ambiguities in the procedures relating to summary and non-summary suspensions by expressly identifying the grounds for imposing such suspensions.

PCX Rule 13.2(c)—PCX Rule 13.2(c) provides that action taken pursuant to PCX Rule 13.2(a) also shall be subject to the applicable provisions of PCX Rule 10.14. Furthermore, under Commentary .01, the Exchange will be required to notify the Commission in the event that it determines to take summary action pursuant to PCX Rule 13.2.

PCX Rule 13.3—PCX Rule 13.3 states that an OTP Holder, OTP Firm, or Associated Person [62] thereof loses all rights and trading privileges when those privileges are suspended or canceled by the Exchange. However, such person or organization shall remain subject to the disciplinary power of the Exchange.

PCX Rule 13.4—PCX Rule 13.4 states that an OTP Holder, OTP Firm, or Associated Person thereof whose trading privileges are suspended may be disciplined by the Exchange for any offense committed either before or after the announcement of the suspension.

PCX Rule 13.5—Other than minor word changes, PCX Rule 13.5 is modeled closely after Article X, Section 3 of the current PCX's Constitution. PCX Rule 13.5 states that a person or organization whose trading privileges have been suspended must immediately afford every resource required by the Exchange for the investigation of its affairs.

PCX Rule 13.6—Other than minor word changes, PCX Rule 13.6 is modeled closely after Article X, Section 4 of the current PCX's Constitution. PCX Rule 13.6 describes the grounds for canceling trading privileges.

PCX Rule 13.7—Other than minor word changes, PCX Rule 13.7 is modeled closely after Article X, Section 5 of the current Exchange's Constitution. PCX Rule 13.7 describes the reinstatement process after trading privileges have been suspended.

PCX Rule 13.8—PCX Rule 13.8 provides that if any OTP Holder, OTP Firm, or any Associated Person is suspended and fails or is unable to apply for reinstatement or fails to obtain reinstatement, trading privileges conferred by an OTP will terminate.

m. PCX Rule 14—Liability of Directors and Exchange

PCX Rule 14 has been adapted from Rule 13 of the current Exchange. Only minor changes in terminology have been made to conform the rule to the proposed demutualization.

n. Option Floor Procedure Advices (''OFPA'')

The proposed rule change also contains revisions to various options floor procedures and policies that have been adopted over time. These revised OFPA have been adapted from existing ones, which were previously approved by the Commission. These OFPA will apply to OTP Holders, OTP Firms, or Associated Persons thereof that conduct business on the options trading facilities. Minor conforming changes in terminology have been made to the existing floor procedures and policies. In addition, the Exchange proposes to delete OFPA B–4 (Market Maker Trading on PCX Equity Floors) and OFPA D–8a (Marking Orders to Reflect Split Transactions) because, according to PCX, they are obsolete and no longer applicable to the current trading environment.

III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.[63] The Brown Letter requested that the Exchange undertake several actions prior to Commission approval of the demutualization proposal. First, the Brown Letter suggested that the Exchange hold another vote on the proposal. The commenter argued that the Exchange's $750 monthly seat assessment has reduced the value of Exchange seats and allegedly was

[62] ''Associated Person'' is defined in PCX Rule 1.1(d).

[63] *See* Brown Letter, note 4 *supra.* The Brown Letter included as an attachment a letter from this commenter to Phil DeFeo, Chairman, PCX, dated October 29, 2003, which also raised issues regarding the Exchange's demutualization proposal.

undertaken to force out a group of dissident seat holders. The commenter urged that the assessment be stopped. Second, the commenter stated that the current PCX Chairman would receive ten percent (10%) of the stock in the reorganized Exchange and the Compensation Committee will award him stock options with a strike price based on the value of $20,000 per seat. The commenter urged that PCX be required to rewrite the option plan both as to the amount of shares and strike price. Finally, the Brown Letter suggested that a new vote be scheduled after the above-mentioned remedies are in place.

In responding to the Brown Letter, the Exchange noted that the allegation suggesting that its management levied the $750 monthly per seat charge for reasons that were not legitimate to the Exchange's business purpose is baseless.[64] The Exchange pointed out that this monthly charge was increased to its current level in February 1999, which it noted was months before current top senior management was in place. The PCX also noted that it temporarily waived the assessment for over a year to reduce the cost to carry an unassigned membership as a means to lessen the impact of the closure of the PCX's equities business and the migration of those seats to the options business.

Regarding the Brown Letter's statement that the current Chairman of PCX would unfairly receive 10% of the stock in the reorganized Exchange, the Exchange asserted that the statement is incorrect. According to the Exchange, there is no guarantee the Chairman, or any other employee, would receive any stock in PCX Holdings. While the stock incentive plan does reserve certain shares for the CEO of the reorganized Exchange, the PCX noted that PCX Holdings' Compensation Committee will administer the stock incentive plan, that the Committee will have the sole and absolute discretion to determine the terms, conditions, restrictions, and limitations of any awards issued pursuant to the plan,[65] and that, therefore, there is no guarantee that any of the reserved shares would be awarded to the CEO. Finally, the Exchange pointed out that terms and conditions of the stock incentive plan were fully disclosed to Exchange members prior to their vote on the demutualization proposal.

IV. Amendment No. 1 to the Proposed Rule Change

In Amendment No. 1 to the proposed rule change, the Exchange proposed revisions to various aspects of its proposal. The proposed revisions in Amendment No. 1 would:

- Add PCX Rule 2.4(h) to specify the required activation time period for approved applications for an OTP;
- Amend the employee registration procedure in PCX Rule 2.23(a)–(c) to reflect a rule amendment previously approved by the Commission;
- Clarify the Nominating Committee's role in PCX Rule 3.2(b)(2)(C)(ii) in that if the Board of Directors is made up of more than 10 individuals, the Public Directors, after consulting with the CEO, will determine whether the additional permit holder representative is an OTP Holder or an Equity Trading Permit Holder of PCX Equities, Inc., and if the additional representative is an OTP Holder, then the Nominating Committee shall nominate additional nominees so that at least twenty percent (20%) of the Directors consist of individuals nominated by trading permit holders;
- Amend the text of PCX Rule 5.3(f)(1)–(4) regarding the listings of options on the securities of restructured companies;
- Amend the description of securities in PCX Rule 5.3(g)(2)(A)–(C) in order to allow for trading of options on fixed-income exchange traded funds;
- Amend PCX Rule 5.6(d) to add a missing cross-reference to PCX Rule 5.6(c);
- Amend the index options rules set forth in PCX Rules 5.10–5.29 in order to reflect a rule amendment previously approved by the Commission;
- Amend PCX Rule 6.8, Commentary .04, to reflect a rule amendment previously approved by the Commission;
- Amend PCX Rule 6.11(a) to reflect a rule amendment previously approved by the Commission;
- Amend PCX Rule 6.23 to add a reference to Article VII, Section 4 of the Bylaws for claims made pursuant to this rule;
- Amend Rule PCX Rule 6.37(f) to remove the reference to the term ''OFTC'' and replace it with ''two Trading Officials;''
- Amend PCX Rule 6.37(b)(1)(F) to reflect a rule amendment previously approved by the Commission;
- Amend PCX Rule 6.37(f)(2) to reflect a rule amendment previously approved by the Commission;
- Amend PCX Rule 6.62 to reflect a rule amendment previously approved by the Commission;
- Amend PCX Rules 6.82, 6.87(b)(6)–(7), and 6.90 to replace references to the term ''Option Allocation Committee'' with ''Exchange;''
- Clarify in Rule 7.1, Commentary .02, the trading hours for options on exchange traded funds;
- Amend PCX Rules 9.2 and 9.11 to replace references to ''Member'' with ''OTP Holder;''
- Amend PCX Rule 9.18(d) to replace the cross-reference to PCX Rule 9.1(b) with PCX Rule 9.1(c);
- Amend PCX Rule 10.1(a) to include associated persons of an OTP Holder to the group of individuals that are subject to PCX jurisdiction for disciplinary matters;
- Amend PCX Rule 10.5(a) to change the minimum number of required Conduct Panel members from one to three;
- Amend PCX Rule 10.14(a)(5) to add a cross-reference to PCX Rule 6.82(e);
- Delete PCX Rule 10.14(m);
- Delete PCX Rule 10.15(d);
- Amend PCX Rule 11.9 to expand the provisions of prohibited discretionary transactions to include transactions executed through ITS or any other Application of the System;
- Amend PCX Rules 12.1(e)(3)&(4) to add Allied Persons of OTP Holders and OTP Firms to the list of individuals covered under the provisions for class action arbitration claims;
- Amend PCX Rule 12.8, Commentary .01 to reinsert Los Angeles as an acceptable forum for arbitrations;
- Amend PCX Rule 13.2(a)(1)(C) to delete a section and remove the Board's ability to suspend the trading privileges of an OTP Holder, OTP Firm, or any Associated Person of an OTP Firm who is found in violation of any of the prohibited acts as specified in Rule 11.2(a)–(f); and
- Delete the former PCX Constitution and Certificate of Incorporation.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[66] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[67] which requires a national securities exchange to be so

[64] Letter from Kathryn L. Beck, Senior Vice President, General Counsel, Corporate Secretary and Chief Regulatory Officer, PCX, to Jonathan G. Katz, Secretary, Commission, dated April 29, 2004.

[65] The PCX noted that the plan reserves 40,500 shares (50% of the eligible shares) for the CEO, which is far less than the 10% of the 1,000,000 authorized shares that the Brown Letter claimed would be awarded to the CEO.

[66] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[67] 15 U.S.C. 78f(b)(1).

organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,[68] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[69] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

A. PCX Holdings as Sole Member

Following completion of the demutualization of PCX, PCX Holdings will be the sole member of the reorganized PCX, which is a non-stock membership corporation. Section 19(b) of the Act [70] and Rule 19b–4 thereunder [71] require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although PCX Holdings is not an SRO, certain provisions of its Certificate of Incorporation and Bylaws may be rules of an exchange [72] if they are the stated policies, practices, or interpretations, as defined in Rule 19b–4 of the Act,[73] of the reorganized PCX. Any proposed rule or any proposed rule change in, addition to, or deletion from the rules of an exchange must be filed pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.[74] Accordingly, PCX has filed the Certificate of Incorporation and Bylaws of PCX Holdings with the Commission.[75]

B. Changes in Control of PCX

The Commission believes that the restrictions in PCX Holdings Certificate of Incorporation on direct and indirect changes in control of PCX Holdings are sufficient to enable the PCX to carry out its self-regulatory responsibilities and to enable the Commission to fulfill its responsibilities under the Act.

The reorganized PCX will continue to be a non-stock membership corporation. Its Bylaws establish PCX Holdings as the sole member.[76] Accordingly, PCX Holdings will have 100% voting control over the reorganized PCX.[77] The Certificate of Incorporation of PCX Holdings imposes limitations on direct and indirect changes in control of PCX Holdings through voting and ownership limitations placed on PCX Holdings' capital stock (whether common stock or preferred stock), and allow the Board of Directors of PCX Holdings to monitor potential changes in control through a notification requirement once a threshold percentage of ownership of capital stock is reached.[78]

Specifically, the Certificate of Incorporation of PCX Holdings provides that no Person, either alone or together with its Related Persons, may vote or cause the voting of shares of capital stock or give any proxy or consent with respect to shares representing more than twenty percent (20%) of the voting power of the issued and outstanding capital stock of PCX Holdings.[79] Furthermore, PCX Holdings Certificate of Incorporation places limitations on the right of any Person, either alone or together with its Related Persons, to enter into any agreement with respect to the withholding of any vote or proxy.

PCX Holdings Certificate of Incorporation also provides that no Person, either alone or together with its Related Persons may own, directly or indirectly, shares constituting more than forty percent (40%) of the outstanding shares of capital stock of PCX Holdings. PCX Holdings Certificate of Incorporation also provides that if any stockholder votes, sells, transfers, assigns or pledges any shares in violation of the transfer restrictions and voting and ownership concentration limits, then those shares shall be treated as owned by the transferor for all purposes, including, without limitation, voting, payment of dividends, and distributions.[80] In addition, if any stockholder votes, sells, transfers, assigns or pledges any shares in violation of the transfer restrictions and voting and ownership concentration limits, PCX Holdings has the right to redeem those shares at a price equal to the par value thereof, upon the approval of the Board of Directors. These voting and ownership limitations, however, can be waived by an amendment to the Bylaws of PCX Holdings adopted by its Board of Directors, subject to the Board having determined that such person is not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act),[81] and the amendment being approved by the Commission. Any such amendment to PCX Holdings Bylaws would be a proposed rule change that would need to be filed with the Commission. The proposed rule change would present the Commission with an opportunity to determine what additional measures, if any, might be necessary to provide sufficient regulatory jurisdiction over the proposed controlling person.

In addition, PCX Holdings Certificate of Incorporation provides that no Person, either alone or together with its Related Persons, who is a trading permit holder of the reorganized PCX, or an equities trading permit holder of PCX Equities, may own, directly or indirectly, shares constituting more than twenty percent (20%) of an class of capital stock of PCX Holdings.

[68] 15 U.S.C. 78f(b)(3).

[69] 15 U.S.C. 78f(b)(5).

[70] 15 U.S.C. 78s.

[71] 17 CFR 240.19b–4.

[72] Section 3(a)(27) of the Act defines the rules of an exchange to be the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, and such stated policies, practices, or interpretations of such exchange as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange. 15 U.S.C. 78c(a)(27).

[73] 17 CFR 240.19b–4. The term ''stated policy, practice, or interpretation'' includes any material aspect of the operation of an SRO.

[74] PCX Holdings Certificate of Incorporation and Bylaws provide that, before any amendment to or repeal of a provision of the Certificate of Incorporation or Bylaws, respectively, shall be effective, it must be submitted to the Board of Directors of the reorganized Exchange and if that Board determines that the amendment or repeal of such provision must be filed with the Commission before it may be effective, the amendment or repeal of such provision shall not be effective until it is filed with the Commission. PCX Holdings Certificate of Incorporation, Article 14, and PCX Holdings Bylaws, Article 7, Section 7.06.

[75] *See* PCX Holdings Certificate of Incorporation, Article 14, and PCX Holdings Bylaws, Article 7, Section 7.06.

[76] PCX Bylaws, Article II, Section 2.01.

[77] The Commission has not formally established the standards for control persons of shareholder-owned national securities exchanges. It expects, however, to consider providing guidance on this issue in the future.

[78] The Certificate of Incorporation for PCX Holdings requires that any Person, either alone or together with its Related Persons, who at any time owns five percent (5%) or more of then outstanding shares of capital stock and who has the right to vote in the election of the Board of Directors of PCX Holdings, shall, immediately upon so owning five percent (5%) or more of the then outstanding shares of such stock, give the Board of Directors of PCX Holdings written notice of such ownership and update that notice promptly after an ownership change of a specified percentage. PCX Holdings Certificate of Incorporation, Article 9, Section 1(b)(iii) and (iv).

[79] The terms ''Person'' and ''Related Persons'' are defined in Article 9 of PCX Holdings Certificate of Incorporation.

[80] PCX Holdings Certificate of Incorporation, Article 9, Section 2.

[81] 15 U.S.C. 78c(a)(39).

The Commission finds that the limitation on ownership of PCX Holdings by trading permit holders is consistent with the Act. Under the member-owned exchange model, a member who trades securities through the facilities of an exchange can have an ownership interest in the exchange. However, a member's interest could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that also directly or indirectly controls an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently surveiling the member's conduct or from punishing any conduct that violates the rules of the exchange or the federal securities laws. An exchange also might be reluctant to surveil and enforce its rules zealously against a member that the exchange relies on as its largest source of capital.[82]

C. Regulatory Jurisdiction Over PCX Holdings

The Commission believes that the terms of PCX Holdings Bylaws provides the Commission with sufficient regulatory jurisdiction over the controlling parties to carry out its oversight responsibilities under the Act. PCX Holdings Bylaws provide that, to the extent that they are related to the activities of the reorganized Exchange, the books, records, premises, officers, directors, agents and employees of PCX Holdings are deemed to be the books, records, premises, officers, directors, agents, and employees of the reorganized Exchange for purposes of and subject to oversight pursuant to the Act.[83] This provision would enable the Commission to exercise its authority under Section 19(h)(4) of the Act[84] with respect to officers and directors of PCX Holdings, because all such officers and directors, to the extent that they are acting in matters related to Exchange activities, would be deemed to be officers and directors of the reorganized Exchange itself. Furthermore, the books and records of PCX Holdings, to the extent that they are related to the activities of the reorganized PCX, are subject to the Commission's examination authority under Section 17(b)(1) of the Act,[85] as these records would be deemed to be the records of the Exchange itself.

In addition, pursuant to PCX Holdings Bylaws, PCX Holdings and its officers, directors, employees and agents, by virtue of their acceptance of such position, are deemed to irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the Commission, and the Exchange for the purposes of any suit, action or proceedings pursuant to the U.S. federal securities laws and the rules and regulations thereunder, arising out of, or relating to, the activities of the reorganized Exchange.[86] Moreover, PCX Holdings and such officers, directors, employees and agents, by virtue of their acceptance of any such position, are deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency. Moreover, PCX Holdings Bylaws provide that the officers, directors, employees and agents of PCX Holdings, by virtue of their acceptance of such position, are deemed to agree to cooperate with the Commission and the reorganized Exchange in respect of the Commission's oversight responsibilities with respect to the Exchange and the self-regulatory functions and responsibilities of the Exchange.[87]

The Commission also notes that, even in the absence of these provisions of PCX Holdings Bylaws, Section 20(a) of the Act[88] provides that any person with a controlling interest in PCX Holdings would be jointly and severally liable with and to the same extent that PCX Holdings is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. The Commission believes that, taken together, these provisions grant the Commission sufficient jurisdictional authority over the controlling persons of PCX Holdings. Moreover, the reorganized Exchange is required to enforce compliance with these provisions because they are ''rules of the exchange'' within the meaning of Section 3(a)(27) of the Act.[89] A failure on the part of the reorganized Exchange to enforce its rules could result in suspension or revocation of registration under Section 19(h)(1) of the Act.[90]

D. Self-Regulatory Function of the Reorganized Exchange

The Rules and Bylaws of the reorganized Exchange reflect its status as a wholly-owned subsidiary of PCX Holdings, under management of the reorganized Exchange's Board of Directors and its designated officers and with self-regulation pursuant to PCX's registration as a national securities exchange under Section 6 of the Act.[91] As a result, the reorganized PCX will retain the self-regulatory organization function for its options business as well as for its subsidiary, PCX Equities.

As the sole owner of PCX, the Commission believes that PCX Holdings' activities with respect to its ownership of PCX must be consistent with PCX's obligations under the Act. Under PCX Holdings Bylaws, PCX Holdings' Board, officers, employees and agents must give due regard to the preservation of the independence of the self-regulatory function of the reorganized PCX and to its obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the Board of Directors of the reorganized PCX relating to its regulatory functions or the structure of the market which it regulates or which would interfere with the ability of the reorganized PCX to carry out its responsibilities under the Act.[92] In

[82] The Commission notes, however, that PCX Holdings should disclose periodically, or otherwise make available upon request, information regarding the number of outstanding shares of capital stock, so that persons with a stake in the capital stock can determine whether they are reaching or have reached any of the thresholds that restrict that person's ability to vote or own the shares or require that person to provide written notice under the Article 9 of the PCX Holdings Certificate of Incorporation.

[83] PCX Holdings Bylaws, Article 7, Section 7.03.

[84] 15 U.S.C. 78s(h)(4). Section 19(h)(4) authorizes the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director: (1) Has willfully violated any provision of the Act or the rules and regulations thereunder, or the rules of a national securities exchange; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange.

[85] 15 U.S.C. 78q(b)(1).

[86] PCX Holdings Bylaws, Article 7, Section 7.04.

[87] PCX Holdings Bylaws, Article 7, Section 7.05. The Commission notes that the staff of the Exchange has indicated that it would present to the Board of Directors of PCX Holdings for its approval a proposed new Bylaws provision stating that PCX Holdings would take such action as is necessary to insure that its officers, directors and employees consent to the applicability of Sections 7.03 and 7.04 of the Bylaws with respect to Exchange-related activities. Letter from Kathryn Beck, Senior Vice President, General Counsel, Corporate Secretary and Chief Regulatory Officer, PCX, to Elizabeth King, Associate Director, Division, Commission, dated May 13, 2004.

[88] 15 U.S.C. 78t(a).

[89] 15 U.S.C. 78c(a)(27).

[90] 15 U.S.C. 78s(h)(1).

[91] 15 U.S.C. 78f.

[92] PCX Holdings Bylaws, Article 3, Section 3.15.

addition, all books and records of the reorganized Exchange reflecting confidential information pertaining to its self-regulatory function (including but not limited to disciplinary matters, trading data, trading practices, and audit information) which come into the possession of PCX Holdings, and the information contained therein, must be retained in confidence by PCX Holdings and the members of its Board and its officers, employees, and agents and shall not be used for any non-regulatory purposes. The Commission believes that these provisions, which are designed to acknowledge the need to maintain the independence of the reorganized Exchange's self-regulatory role and protect from improper use information pertaining to the self-regulatory function of the reorganized Exchange, are appropriate.

Further, the Commission notes that the Certificate of Incorporation for the reorganized Exchange expressly requires that the Board of Directors of the reorganized PCX to consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act,[93] including the requirement that the rules of the reorganized PCX be designed to protect investors and the public interest, and the requirement that the reorganized PCX shall be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and with the rules of the reorganized Exchange. In the Commission's view, this provision should serve to remind the Board of Directors that they must consider the interests of all Exchange constituents and the requirements of the Act when taking actions on behalf of the reorganized PCX.

E. Fair Representation

Section 6(b)(3) of the Act[94] requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. In addition, Section 6(b)(1) of the Act requires that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act.

Under the Bylaws of the reorganized PCX, the reorganized Exchange will have not less than eight (8) or more than twelve (12) Directors, with the Board of Directors to consist initially of ten (10) Directors, including the CEO of PCX Holdings. The authorized number of Directors will be as determined from time to time by the Board of Directors of the reorganized PCX. At least fifty percent 50% of the Directors shall be Public Directors.[95] At least twenty percent 20% of the Directors will consist of individuals nominated by the trading permit holders, with at least one Director nominated by the ETP Holders[96] of PCX Equities, Inc. and with at least one Director nominated by the OTP Holders of the reorganized PCX (''Permit Holder Directors''). The exact number of Public Directors and Permit Holder Directors will be determined from time to time by the Board of Directors, subject to the percentage restrictions described in proposed Article III, Section 3.02(a) of the reorganized PCX's Bylaws.

The initial Directors of the reorganized Exchange will consist of individuals nominated by the Nominating Committee of the current PCX in consultation with the CEO and will be approved by the Exchange's Board of Directors. After the formation of the initial Board of Directors, the Nominating Committee of the Board of Directors of PCX Holdings will nominate Directors for election to the Board of Directors of the reorganized PCX. The reorganized PCX Nominating Committee will nominate the OTP Holder nominee(s) to the Board of Directors.[97] At the first annual meeting and at each subsequent annual meeting of the Holding Member,[98] except as otherwise provided by the reorganized PCX's Bylaws, the Holding Member will elect Directors to serve until the next annual meeting or until their successors are elected and qualified. The reorganized PCX Board of Directors will appoint the Chairman of the Board of the reorganized Exchange by majority vote.

In addition, pursuant to the proposed Bylaws of the reorganized PCX, each Board Committee will be comprised of at least fifty percent 50% Public Directors. The Board Appeals Committee will be made up of the OTP Director(s), the ETP Director(s), and all of the Public Directors. The Regulatory Oversight Committee will be made up of all of the Public Directors of the reorganized Exchange. The Audit Committee will be made up of at least three Directors and all must be Public Directors with one at least one having accounting or related financial management expertise. The Compensation Committee will be made up of at least three Directors, but only one non-Public Director may serve on that Committee.

Further, various Options Committees will have representatives of OTP Holders, as well as Public Directors. The Nominating Committee will have seven members consisting of six OTP Holders and one person from the public. The EBCC will be made up primarily of OTP Holders and Allied Persons of an OTP Firm and at least one member of the public will serve on the EBCC.[99] The OTP Advisory Committee will be made up of OTP Holders and the reorganized Exchange will attempt to have diverse OTP Holder representation of different constituencies on that Committee.

The Commission finds that the requirement that the Board be composed of at least 50% Public Directors is consistent with Sections 6(b)(1) and 6(b)(3) of the Act,[100] which requires that one or more directors be representative of issuers and investors. The Commission also finds that the requirement that the Board of Directors be composed of at least 20% Permit Holder Directors and the manner in which such Directors will be nominated and elected, together with the representation of Permit Holders on key Board and Options Committees, satisfies the fair representation requirements in Section 6(b)(3) of the Act.[101] The Commission notes, however, that trading privileges will be separated from corporate ownership of the reorganized Exchange and will be available exclusively through trading permits following the completion of the demutualization. The Commission

[93] 15 U.S.C. 78f.

[94] 15 U.S.C. 78f(b)(3).

[95] PCX Bylaws, Article III, Section 2(a).

[96] *See* PCXE Rule 1.1(n) (definition of ''ETP Holder'').

[97] The Commission notes that the selection process for the OTP Holder nominee(s) differs from the selection process for the ETP Holder nominee. PCX represents that the ETP Nominee will be appointed to the reorganized PCX Board of Directors as required by the PCX/PCXE Shareholder Voting Agreement.

[98] The reorganized PCX is a non-stock corporation consisting of a sole member, PCX Holdings. *See* Bylaws of the reorganized PCX, Article II, Section 2.01 for a definition of Holding Member. Only the Holding Member has any right to take part in the ownership of the Exchange and will be the sole ''Corporate Member'' of the Exchange, as that term is defined in Article 5 of the reorganized PCX's Certificate of Incorporation.

[99] The EBCC may, among other things, impose appropriate sanctions including suspension and expulsion where it finds that a violation within the disciplinary jurisdiction of the reorganized Exchange has been committed. *See* PCX Rule 3.2(b)(1)(B)(iii).

[100] 15 U.S.C. 78f(b)(3).

[101] *Id.*

therefore expects that trading permits will not be issued in a manner that would undermine or circumvent the requirement in Section 6(b)(3) of the Act for fair representation of members.[102] The Commission also notes that OTP Holders and OTP Firms will retain a voice in the administration of the affairs of the reorganized Exchange, including rulemaking and the disciplinary process, through OTP Holder participation on various Board and Options Committees.

Finally, the Commission notes that the proposed rule change includes revisions to the reorganized Exchange's governance structure to reflect the demutualization. The Commission is in the process of reviewing a range of governance issues relating to self-regulatory organizations and, depending on the results of that review, may determine that further steps designed to strengthen the governance of SROs, including the reorganized Exchange, are necessary.

F. Dividends

With the demutualization, the holders of capital stock will have the dividend and other distribution rights of a stockholder in a Delaware stock corporation. The Bylaws of the reorganized Exchange entitles the Holding Member (*i.e.*, PCX Holdings) to receive, at the discretion of the Board of Directors, dividend distributions. The Bylaws further provide that any revenues received by the Exchange from regulatory fees or regulatory penalties will be applied to fund the legal, regulatory, and surveillance operations of the Exchange and will not be used to pay dividends.[103] This limitation would preclude the reorganized Exchange from providing dividends derived from regulatory fees or penalties to the sole Holding Member of the reorganized Exchange, *i.e.*, PCX Holdings. As a result, PCX Holdings would not be able to provide dividends derived from regulatory fees or penalties belonging to the Exchange to its stockholders. The Commission finds that the prohibition on the use of regulatory fees or penalties to fund dividends is consistent with Section 6(b)(3) of the Act [104] because it will ensure that the regulatory authority of the Exchange is not used improperly to benefit PCX Holdings and its stockholders.

[102] *Id.*

[103] For purposes of this provision, regulatory penalties include restitution and disgorgement of funds intended for customers.

[104] 15 U.S.C. 78f(b)(3).

VI. Accelerated Approval of Amendment No. 1

The Commission finds good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[105] In Amendment No. 1, PCX clarified rule text, including the usage of terms such as ''OTP Holder'' and ''OTP Firm;'' amended rule text to reflect changes to rules approved by the Commission subsequent to the filing of the proposed rule change; revised rule text to comport more closely with the Rules of the current Exchange; added cross-references to provisions of rules, as appropriate; corrected erroneous references; deleted extraneous provisions; and clarified that the Constitution and Articles of Incorporation of the current Exchange would be deleted.

The Commission notes that generally the revisions to the Rules contained in Amendment No. 1 clarify the Rules as initially proposed; reflect changes to Rules as a result of subsequent Commission action and thus previously were published for comment by the Commission; or amend the Rules in insignificant ways to comport with the demutualization process. As a result, the Commission believes that Amendment No. 1 raises no new issues and that acceleration of the amendment is appropriate.

VII. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 1 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–PCX–2004–08 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–PCX–2004–08. 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 PCX. 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–PCX–2004–08 and should be submitted on or before June 14, 2004.

[105] 15 U.S.C. 78s(b)(2).

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[106] that the proposed rule change (SR–PCX–2004–08) be and hereby is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[107]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11651 Filed 5–21–04; 8:45 am]

BILLING CODE 8010–01–P

[106] 15 U.S.C. 78s(b)(2).

[107] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Request for Grant Proposals for a Demonstration of a Web-based, Multimodal Trip Planning System

SUMMARY: FTA is issuing a request for grant proposals (RFP) for a demonstration and evaluation of a standards-based, prototype, trip itinerary planning system that is multimodal (transit, driving, parking, *etc.*). The multimodal trip planner will provide door-to-door instructions over the Internet for a trip along a corridor. It will incorporate accessibility

information and features of the transportation network, and accommodate customer preferences and constraints. The prototype system will demonstrate the integration of existing single-mode trip planning systems through the use of draft eXtensible markup language (XML) schemas that are based on Intelligent Transportation Systems (ITS) standards. The goals of the project are to demonstrate the technical and institutional feasibility of a standards-based, integrated, multimodal trip planning system, using XML, and to analyze the feasibility of the multimodal trip planning system vision.

DATES: Request for grant proposals may be viewed at: *http://www.fta.dot.gov/legal/federal_register/2004/1260_ENG_HTML.htm.* Proposals will be accepted immediately, as of the date of this notice. Proposals are due by 4:15 p.m. e.s.t. on August 30, 2004.

ADDRESSES: Proposals shall be addressed to Mr. Brian P. Cronin, Advanced Public Transportation Systems (APTS) Division, Room 9402, TRI–11, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and shall reference ''Multimodial Trip Planner Demonstration.''

FOR FURTHER INFORMATION CONTACT: Technical questions or concerns may be directed to Mr. Brian Cronin via phone at 202–366–4995 or via e-mail at *mtpd@fta.dot.gov.* Legal questions or concerns may be directed to Mr. James LaRusch via phone at 202–366–1936 or via e-mail at *James.LaRusch@fta.dot.gov.* Office hours are 8:30 a.m. to 5 p.m. e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: FTA is seeking proposals from teams of public and private transportation providers that currently have operational trip planning systems (or will have operational systems by the time this grant is awarded). The integrated multimodial trip planner component, to be developed for this demonstration, will:

- Obtain trip parameter information from the traveler via the Internet,
- Process the input data and data provided by the existing trip planning systems,
- Generate comparative origin-to-destination trip planning itineraries, and
- Provide the itineraries to the requester in a comparative format via the Internet.

The conductor of the demonstration will perform a self evaluation and deliver an evaluation report and demonstration final report that shall include, but not be limited to, lessons learned on the application to ITS standards.

Dated: May 19, 2004.

Jennifer L. Dorn,

Administrator.

[FR Doc. 04–11693 Filed 5–21–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17678; Notice 1]

Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) has determined that the certification labels on certain vehicles that it produced in 1998 through 2004 do not comply with S5.3.2 of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for motor vehicles other than passenger cars.'' Ford has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Ford has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Ford's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 908,548 model year 1999 through 2003 Ford Windstar multipurpose passenger vehicles and approximately 86,321 model year 2004 Ford Freestar and Mercury Monterey multipurpose passenger vehicles produced between August 4, 1998, and March 24, 2004, are affected. S5.3.2 of FMVSS 120 requires that each vehicle shall identify either on the certification label or on the separate tire information label ''the [rim] size designation and, if applicable, the type designation of [r]ims * * *.'' The labeling on the affected vehicles does not include the rim size and type information required by S5.3.2.

Ford believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Ford states that the likelihood of an operator inadvertently installing an incorrect wheel on one of these vehicles is virtually nonexistent because the rim size and type information is marked on the wheels of the vehicle. Ford is not aware of any owner or field complaints related to the label omission, nor is it aware of any incidents relating to motor vehicle safety or any other evidence that this inadvertent omission of rim size and type data on the vehicle labeling has had a negative safety impact on the owners and/or operators of these vehicles.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 23, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 18, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–11692 Filed 5–21–04; 8:45 am]

BILLING CODE 4910–59–P

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 June 23, 2004.

ADDRESSES: *Address Comments to:* 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 materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 18, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

NEW EXEMPTIONS—APRIL 2004

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13558–N	RSPA–2004–17737	Boeing Company Mesa, AZ.	49 CFR 173.62(b)	To authorize the one-time transportation in commerce of munitions to hazardous waste disposal facility in original containers instead of performance-oriented packaging. (mode 1).
13559–N	RSPA–2004–17739	The Dow Chemical Company Midland, MI.	49 CFR 180.605(c)(2)	To authorize an alternative method of testing DOT-Specification 51 portable tanks for use in transporting certain Division 2.2 materials. (mode 1).
13560–N	RSPA–2004–17740	Texaco Ovonic Hydrogen Systems L.L.C. (TOHS) Rochester Hills, MI.	49 CFR 173.301(a)(1); 173.301(d).	To authorize the transportation in commerce of hydrogen in a metal hydride storage system that utilize non-DOT specification cylinders. (mode 1).
13561–N	RSPA–2004–17741	Sigma-Aldrich Corporation Milwaukee, WI.	49 CFR 171–180	To authorize the one-time transportation in commerce of certain hazardous materials to a new site to be transported as essentially unregulated. (mode 1).
13562–N		TRW Vehicle Safety Washington, MI.	49 CFR 173.166(e)(4)	To authorize the transportation of airbag inflators, air bag modules and seat belt pretensioners in reusable containers of wooden construction. (mode 1).
13563–N		Applied Companies Valencia, CA.	49 CFR 178.53	To authorize the transportation in commerce of non-DOT specification cylinders charged with nitrogen, compressed. (modes 4, 5).

[FR Doc. 04–11690 Filed 5–21–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of 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. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. There applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before June 8, 2004.

ADDRESSES: *Address Comments to:* 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 materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 18, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

MODIFICATION EXEMPTIONS—APRIL 2004

Application No.	Docket No.	Applicant	Modification of exemption	Nature of exemption thereof
7951–M		Alamance Foods, Inc., Burlington, NC.	7951	To modify the exemption to authorize non-refillable metal containers be equipped with an alternative dome expansion device for the transportation of aerosols containing Division 2.2 materials.
8627–M		Nalco Energy Services, L.P., Naperville, IL.	8627	To modify the exemption to authorize the transportation of an additional Class 3 material in non-DOT specification portable tanks.
9874–M		Dow Chemical Company, Midland, MI.	9874	To modify the exemption to authorize the use of video cameras or instrumentation as an alternative to the tank truck loading requirement for the transportation of various hazardous materials.
11379–M		TRW Automotive, Washington, MI.	11379	To modify the exemption to authorize a maximum carbon percent of 0.20 for both check and ladle analysis and relief from the marking requirements on packaging and shipping papers for the non-DOT specification pressure vessels.
11489–M		TRW Automotive, Washington, MI.	11489	To modify the exemption to authorize the transportation of a Class 9 material without marking the exemption number on pressure vessels used in the air bag module assembly.
11592–M		Amtrol, Inc., West Warwick, RI.	11592	To modify the exemption to authorize adding 10% helium to the compressed air and to increase the maximum pressure to 50 psig for the non-DOT specification steel water pump system tank.
11650–M		Autoliv ASP, Inc., Ogden, UT	11650	To modify the exemption to eliminate the ladle carbon requirement and allow the use of steel cylinders when the check analysis maximum carbon content does not exceed 0.20% for the non-DOT specification pressure vessels.
11691–M		PepsiCo International, Valhalla, NY.	11691	To modify the exemption to authorize relief from the marking requirements on packaging inside ocean bulk cargo containers transporting various Class 3 and Class 8 materials.
13402–M		Solvay Chemicals, Inc., St. Louis, MO.	13402	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in DOT Specification 110A1000W multi-unit tank car tanks with a higher density than currently authorized.

[FR Doc. 04–11691 Filed 5–21–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R and SE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE.

DATES: Written comments should be received on or before July 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Number: 1040A and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE.

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,846,102.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 1,568,462,184.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11683 Filed 5–21–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
May 24, 2004

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 25

Federal Acquisition Regulation; Nonavailable Articles-Policy; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2003–021]

RIN 9000–AJ95

Federal Acquisition Regulation; Nonavailable Articles-Policy

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the intent of the list of items determined to be nonavailable for purposes of the Buy American Act, and emphasize the need to conduct market research, appropriate to the circumstances, for potential domestic sources.

DATES: Interested parties should submit comments in writing on or before July 23, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit printed comments to General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to the U.S. Government's rulemaking website at *http://www.regulations.gov*, or to GSA's e-mailbox at *farcase.2003–021@gsa.gov*.

Please submit comments only and cite FAR case 2003–021 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2003–021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend FAR Subpart 25.1 in order to clarify the intent of the list of nonavailable items at FAR 25.104(a), and to emphasize the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

The Buy American Act (41 U.S.C. 10a–10d) restricts the purchase of articles for public use in the United States that are not mined, produced, or manufactured in the United States. The Buy American Act provides an exception for articles of a class or kind not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. FAR 25.103(b)(1) provides a determination that articles listed at FAR 25.104(a) meet the conditions of this exception.

The established list of articles identified in FAR 25.104(a) is a wide-ranging mix of natural resources, compounds, materials, and other items of supply. Although some articles on the list have no known domestic production sources (e.g., quartz crystals or vanilla beans), many of the articles are known to have some domestic production sources, but those sources have been determined in the past to be inadequate to meet total U.S. Government and nongovernment demand. Examples of such articles range from goat and kidskins (negligible domestic production), to crude iodine (5 percent of U.S. demand), to bismuth (not in excess of 50 percent of U.S. demand). The Councils invite comment on the appropriateness of including items on the nonavailability list for which there are domestic sources that can meet 50 percent of total U.S. demand.

The proposed rule adds introductory text at 25.103(b) to explain that the nonavailability exception to the Buy American Act does not mean that these items are completely nonavailable from U.S. sources, but that they are of a class or kind that is not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

The proposed rule also relocates the information on how to handle potential deletions from the list (currently at 25.104(b)) to the same section that discusses possible additions to the list (25.103(b)).

The current FAR allows the contracting officer to rely on the list, unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation, that an article on the list is available in sufficient and reasonably available quantities of a satisfactory quality. The contracting officer must then amend the solicitation if purchasing the article, or if purchasing an end product that could contain such an article as a component, and must specify in all new solicitations that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components. In addition, the contracting officer must submit a copy of supporting documentation to the appropriate council identified in 1.201–1 in accordance with agency procedures, for possible removal of the article from the list.

Because market conditions may change, and items on the list may be available in sufficient quantity and quality for a particular acquisition, even though not in a quantity sufficient to meet total U.S. demand, the proposed rule requires a more proactive role for the agency. It requires the agency to conduct a level of market research appropriate to the circumstances, including seeking of domestic sources, before acquisition of an article on the list as an end product, a significant component (valued at more than 50 percent of the value of all the components), or a construction material. The proposed rule does not require the contracting officer to do market research seeking domestic sources for articles on the list of nonavailable articles that are minor components of an end item.

The proposed rule also contains the requirements for publication of the nonavailability list at least once every 5 years, with an invitation to the public to submit unsolicited recommendations in the interim, with sufficient documentation to permit evaluation.

A FAR notice 2004–N1, List of Nonavailable Articles Under the Buy American Act, requesting public comment on the domestic availability of items on the list has recently been published in the **Federal Register** at 69 FR 28104, May 18, 2004.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is a clarification of existing policies, except for requiring a more proactive approach to market research by the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will

consider comments from small entities concerning the affected FAR part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: May 13, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

1. The authority citation for 48 CFR part 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Amend section 25.103 by revising paragraph (b) to read as follows:

25.103 Exceptions.

* * * * *

(b) *Nonavailability.* The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations.* (i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American Act provision and clause are included in the solicitation (see 25.1101(a), 25.1101(b), or 25.1102);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in 1.201–1 in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.* (i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201–1 in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

* * * * *

3. Amend section 25.104 in paragraph (a) by removing ''25.103(b)'' and adding ''25.103(b)(1)(i)'' in its place; and revising paragraph (b) to read as follows:

25.104 Nonavailable articles.

* * * * *

(b) This list will be published in the **Federal Register** for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time, and should provide sufficient data and rationale to permit evaluation (see FAR 1.502).

25.202 [Amended]

4. Amend section 25.202 in the last sentence of paragraph (a)(2) by removing ''25.104(b)'' and adding ''25.103(b)(1)'' in its place.

[FR Doc. 04–11596 Filed 5–21–04; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Monday,
May 24, 2004

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Research and Training Centers (RRTC) Program—Improving Employment Outcomes; Notices

DEPARTMENT OF EDUCATION

RIN 1820 ZA26

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities (NFP) on improving employment outcomes.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2004 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve employment-related rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These final priorities are effective June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Rehabilitation Research and Training Centers

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the RRTC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of approved grant objectives.

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on February 4, 2004 (69 FR 5327). The NPP included a background statement for these priorities at 69 FR 5329. This NFP contains significant differences from the NPP. We discuss these changes in the *Analysis of Comments and Changes* section published as an appendix to this notice.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

These final priorities are in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for each priority presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities

The Assistant Secretary announces four priorities for the funding of RRTCs that will conduct research on improving employment outcomes of individuals with disabilities. These priorities are: Priority 1—Employment Policy and Individuals with Disabilities; Priority 2—Employment Service Systems; Priority 3—Workplace Supports and Job Retention; and Priority 4—Substance Abuse and Employment Outcomes.

Under each of these priorities, the RRTC must:

(1) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, individuals with disabilities and their family members, practitioners, service providers, researchers, and policymakers;

(2) Provide technical assistance to critical stakeholders to facilitate utilization of research findings; and

(3) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the RRTC's research activities, for individuals with disabilities, their representatives, service providers, and other interested parties.

In addition to the specific activities proposed by the applicant, each RRTC must:

• Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle, including research from other sources, and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle;

• Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;

• Involve persons with disabilities in planning and implementing the RRTC's research, training, and dissemination activities, and in evaluating the research;

• Demonstrate in its application how it will address, in whole or in part, the needs of individuals with minority backgrounds;

• Demonstrate how the RRTC project will yield measurable results for individuals with disabilities;

• Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets;

• Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities;

• Consider the effect of demographics factors such as race/ethnicity and educational level and disability factors such as disability severity when conducting the research; and

• Articulate goals, objectives, and expected outcomes for the proposed research activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are designed to demonstrate outcomes that are consistent with the proposed goals. Applicants must include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness.

An RRTC must focus research on one of the following priorities:

Priority 1—Employment Policy and Individuals with Disabilities: The purpose of the priority on employment policy and individuals with disabilities is to improve information on the employment status of individuals with disabilities and the effects of legislative and policy initiatives on employment outcomes for such individuals. The research funded under this priority must be designed to contribute to the following outcomes:

• Improved understanding of employment trends for individuals with disabilities in relation to macroeconomic, legislative, and policy changes;

• Strategies for evaluating legislative and policy efforts to improve employment outcomes for individuals with disabilities; and

• Identification of policies that contribute to improved employment outcomes for individuals with disabilities.

The research resulting from this RRTC's program will provide guidance to policy-makers and others involved in efforts to improve employment outcomes for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

Priority 2—Employment Service Systems: The purpose of the priority on employment service systems is to identify effective strategies that could be used by public and private employment service providers to improve employment outcomes for individuals with disabilities. Among public systems, the RRTC may include State vocational rehabilitation services and services provided under the Workforce Investment Act (WIA). Among private systems, the RRTC may include for-profit and non-profit employment service providers. The RRTC may propose research related to other public and private employment systems. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Community-Based Employment Service Programs and State Service Systems. The research funded under this priority must be designed to contribute to the following outcomes:

• Cost-effective strategies that enhance consumer access to services that improve employment outcomes;

• Effective strategies that enhance consumer satisfaction with services that improve employment outcomes;

• Effective simplified strategies for eligibility determination that promote access to services and improved customer satisfaction;

• Effective service system strategies for the provision of individualized services, and enhanced coordination of services at the individual level; and

• Effective strategies to improve employment outcomes for individuals with disabilities.

Priority 3—Workplace Supports and Job Retention: The purpose of the priority on workplace supports and job retention is to improve employment outcomes through the use of effective workplace supports and job retention strategies. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Employer Roles and Workplace Supports. The research funded under this priority must be designed to contribute to the following outcomes:

• Improved understanding of the use of workplace supports, accommodations, and strategies across a variety of work settings and with specific disability groups;

• Improved understanding of factors that impede the use of effective workplace supports and job retention strategies; and

• Identification of effective employer-based or workplace strategies or accommodations that improve employment outcomes and factors that influence improved employer understanding of these workplace strategies or accommodations.

Priority 4—Substance Abuse and Employment Outcomes: The purpose of the priority on substance abuse and employment outcomes is to improve employment outcomes for individuals with disabilities who also have substance abuse problems. The research funded under this priority must be designed to contribute to the following outcomes:

• Effective techniques for individuals and agencies providing employment-related services to individuals with disabilities to screen and identify those who have substance abuse problems; and

• Effective strategies to improve employment outcomes for individuals with disabilities who have substance abuse problems.

When conducting this work, the RRTC must examine strategies that are effective in both community and work settings (including community-based partnerships) and must examine the effects of workplace support and clinical treatment services, including substance use disorder treatment programs. The reference to this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the

order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, we have determined that the benefits of the final priorities justify the costs.

Summary of potential costs and benefits:

The potential costs associated with these final priorities are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC Program have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these final priorities will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information to improve options and participation in the community for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 18, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

In response to our invitation in the NPP, we received 38 comments. An analysis of the comments and of the changes in the priorities since publication of the NPP follows. We discuss substantive issues under the title of the priority to which they pertain.

Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

General

Discussion: On page 5328 of the NPP, under the section entitled *General Requirements of Rehabilitation Research and Training Centers,* we included a paragraph encouraging applicants, among other things, to include information in their applications about proposed goals, objectives, and expected outcomes for their research activities and how they will measure outcomes and the mechanisms they will use to evaluate outcomes. Based on our own review and comments received from OMB, we believe that we should require all applicants to provide this information to ensure that applicants are sufficiently focused on proposed objectives and outcomes of their research activities.

Change: We have modified the language in this paragraph to make the application requirements mandatory and, in the NFP, have inserted this paragraph as the last required activity in the bullet-point list of activities, listed in the Priorities section, which all RRTCs must conduct.

Comment: One commenter suggested that it appeared the discussion of the proposed priorities of the employment RRTCs omitted language focusing on the role of postsecondary education in the employment of persons with disabilities.

Discussion: We do not believe it is necessary to include language in the proposed priorities that focuses specifically on the role of postsecondary education in the employment of persons with disabilities. Applicants, however, are free to propose research activities in this area.

Changes: None.

Comment: Three commenters recommended that NIDRR add a Priority Five and title it New Freedom Initiative. The purpose of the priority would be to establish an RRTC to improve understanding of the impact of the NFI on States, local communities, employers, individuals with disabilities, and families. The commenters believed that the addition of this priority would respond to the focus of the Administration's efforts to build on the scope of changes resulting from the Americans with Disabilities Act of 1990 with the design and implementation of the NFI. The commenters further suggested that the establishment of such an RRTC would allow an applicant to focus on both specific multiple subgroups of the disability population and the evaluation of efforts related to these subgroups within the broad framework of the NFI. It was also suggested that this framework would not prioritize one subgroup over another, as proposed in Priority Four.

Discussion: NIDRR developed its priorities with the intent that they support the goals of the President's NFI. NIDDR intended that the proposed priorities allow an applicant the discretion to determine the target population that the proposed research and training activities will address, including research involving subgroups within populations. NIDRR does not believe that Priority Four favors one population over another. Rather, NIDRR believes that this priority allows applicants to address the needs and concerns of individuals with a diverse range of disability characteristics, substance abuse problems, and employment issues.

Changes: None.

Comment: One commenter noted an increased recognition of a distinct population of persons with disabilities who live with episodic disabilities, including persons with psychiatric disabilities; neurological disabilities, such as seizure disorders; HIV/AIDS; Multiple Sclerosis; and serious emotional and learning disabilities. The commenter expressed concern that the proposed priorities addressed a mixed population of persons with disabilities and believed the priorities should better define the populations according to common issues, barriers, policy, and interventions. It was further communicated that developmental and physical disabilities should not be part of a congregate grouping.

Discussion: NIDRR considers it unnecessary to specify the composition of the target population(s) of the research. NIDRR prefers to provide an applicant the discretion to identify the disability population(s) that its application will target and how it will focus its research activities on the specified population(s) within the context of the priority. NIDRR does not believe that the priorities as described preclude an applicant from proposing research and training activities that have a focus on specific populations and issues of research targeting multiple population groups in order to demonstrate common issues, barriers, policy, and interventions across disability groups or to conduct research on single or group disabilities that are characterized as being episodic. The peer review process will evaluate the merits of the approaches proposed in the application.

Changes: None.

Economic Research on Employment Policy and Individuals With Disabilities

Comment: Twenty-one commenters expressed concern about the primary focus of the RRTC on employment policy and individuals with disabilities. They suggested that the use of the word ''economic'' limited the ability of applicants to propose research and training activities that focus on aspects of policy that extend beyond the analyses of large data sets and economic methods. Commenters considered the relationship between public policy implementation and

employment outcomes to be complex and encouraged NIDRR to revise the language in Priority One to focus generically on employment policy rather than economic research on employment policy and individuals with disabilities.

Discussion: NIDRR agrees that the focus of the priority on economic research is unnecessarily narrow and changed language in the priority to expand its focus. Because NIDRR believes that economics is a critical element of employment policy, we will retain language in the priority that requires an applicant to include research activities within the scope of its proposed project that address some aspect of employment trends for individuals with disabilities in relation to macroeconomic changes.

Changes: The language is revised to remove the word ''Economic Research'' from the title of the priority and to remove the word ''economic research'' from the purpose statement of the priority.

Comment: Twenty-one commenters suggested that the RRTC should address improving the quality and utility of research, providing practical applications to the policymaking process, and filling gaps in our understanding of the complex issues and factors affecting the employment of the heterogeneous population of persons with disabilities, including barriers for workplace participation and outcomes.

Discussion: NIDRR believes that the priority as described allows an applicant the flexibility to propose research activities that may improve the quality and utility of research, provide practical applications to the policy making process, and fill gaps in our understanding of issues and factors affecting the employment of persons with disabilities, including barriers for workplace participation and outcomes. While not precluded, NIDRR believes it is unnecessary to require all applicants to propose research activities as described by the commenters. NIDRR expects that all research activities that it supports will be of high quality, generate findings having utility, and fill gaps in our understanding of issues and factors influencing persons with disabilities. The peer review process will evaluate the merits of the research activities proposed in the application.

Changes: None.

Comment: One commenter recommended that the RRTC be required to look beyond the macro rate of employment trends toward developing an understanding of motivational factors associated with these trends and how they can facilitate the ability of policymakers to work effectively to abolish disincentives to work for people with disabilities and to better encourage employers to hire persons with disabilities.

Discussion: The language in the priority does not preclude research that focuses on investigating motivational factors associated with employment trends. The peer review process will evaluate the merits of the research and training activities proposed in the application. NIDRR has no basis for requiring that all applicants focus their research and training activities on motivational factors in response to this priority.

Changes: None.

Comment: One commenter suggested that NIDRR encourage the use of rigorous policy methods designed to assess the impact of specific policies and that these methods be in line with current standards of practice in policy analysis.

Discussion: NIDRR expects that the research will be rigorous and of high quality, but it is the responsibility of the applicant to delineate methods and standards that are relevant and appropriate to the research proposed. The peer review process will evaluate the merits of the methods and standards proposed in the application. NIDRR has no basis for specifying what these methods and standards should be.

Changes: None.

Comment: One commenter considered it important that this Center interact with the RRTC funded under Priority Two since a significant part of implementation of public policy occurs in the context of State service systems, and much of the emerging Federal policy requires significant change in the priorities, message, and structure of State and local service systems.

Discussion: The NPP included language that requires grantees to coordinate with relevant NIDRR-funded research projects of mutual interest as identified through consultation with the NIDRR project officer. The peer review process will evaluate the merits of the coordinative activities proposed in the application.

Changes: None.

Employment Service Systems

Comment: One commenter suggested that efforts be made to develop stakeholders and acquire human and capital resources from other non-disability sectors that might have an interest in efforts to improve employment outcomes for people with disabilities. The commenter also suggested that the inclusion of trade unions, employer associations, and business improvement districts could expand and help make employment a priority of entities other than the disability service system and consumers/advocates. It was further suggested that the processes of developing stakeholders and a common mission, forming collaborations, and demonstrating both employment outcomes and increased integration into the workplace and reduced stigma should be required in the priority.

Discussion: NIDRR believes that an applicant has the flexibility to propose research that includes the processes of developing stakeholders and acquiring human and capital resources from other non-disability sectors interested in improving employment outcomes for people with disabilities; expanding and helping make employment a priority of entities other than the disability services system and consumers/advocates; developing a common mission and collaborations; and demonstrating both employment outcomes and increased integration into the workplace and reduced stigma. The peer review process will evaluate the merits of the research strategies proposed in an application.

Changes: None.

Comment: One commenter noted that youth experience difficulties in accessing postsecondary education and employment following school completion. The commenter further noted the need to better align special education services with the adult workforce development system by focusing research activities on youth with disabilities in their transition from school to work.

Discussion: An applicant may propose the young adult population as its target population and the composition of employment service systems as the commenter describes. We prefer to provide an applicant the discretion to identify the target population and composition of employment service systems around which it elects to develop its research and training program. The peer review process will evaluate the merits of the research strategies proposed in an application. NIDRR has no basis for specifying what an applicant's target populations should be.

Changes: None.

Comment: One commenter requested clarification as to whether the intent of the priority is to influence the structure and design of effective State service systems at a State policy level or to influence the effectiveness of employment supports at an individual level. It was suggested that the breadth of the priority may limit the RRTC's ability to support a research agenda that has the capacity to address effectiveness of strategies used to increase employment outcomes of persons with disabilities.

Discussion: The priority allows applicants the flexibility to identify strategies that are designed to be effective at either a systems or individual level, or at both levels. The peer review process will evaluate the merits of the approaches proposed in an application.

Changes: None.

Comment: One commenter believes that the priority emphasized satisfaction with service delivery and encouraged NIDRR to disentangle the emphasis on satisfaction, employment outcomes, and access by separating research focused on satisfaction from the emphasis on access to services. The commenter also encouraged NIDRR to frame any research priority emphasizing satisfaction in the context of a broad-based process of quality improvement for services that incorporates multiple approaches for the effective participation of consumers in quality improvement of service systems. The commenter further recommended that NIDRR maintain a broad emphasis on assessing the quality of life impact of service strategies and identifying characteristics that lead to better personal outcomes.

Discussion: NIDRR believes that the priority allows an applicant the ability to propose research focused on employment outcomes, consumer satisfaction, and consumer access, and does not preclude or require examination of potential linkages between these variables for clarification purposes. Nonetheless, we are revising the language of the priority to provide for separate research outcomes for consumer access and satisfaction. NIDRR does not believe that it has a basis for requiring that all applicants apply the approaches described by the commenter or to restrict studies to independent examination of one or the other of these activities.

Changes: We have modified the language of the first outcome specified in the priority to provide for two separate outcomes: one focused on consumer access to services and the other on consumer satisfaction with services.

Comment: One commenter noted that the priority combined language in the Plan that addresses ''Community-Based Employment Service Programs'' and ''State Service Systems''. It was suggested that NIDRR clarify whether its intent is to study effective strategies used by State agencies to expand access to employment, or whether its intent is to expand knowledge of effective strategies used by the community rehabilitation provider network.

Discussion: The described purpose of this RRTC is to identify effective strategies for use by both public and private employment service providers to improve employment outcomes for individuals with disabilities. NIDRR believes that an applicant should have the discretion to identify the specific approaches that it proposes to use in conducting the research and composition of the state service systems on which its research activities will focus. The peer review process will evaluate the merits of the approaches proposed in an application. NIDRR considers it unnecessary to specify additional requirements governing the expansion of knowledge beyond the general requirements identified for all RRTCs on the dissemination of research findings.

Changes: None.

Workplace Supports and Job Retention

Comment: One commenter noted that recent discussions by agencies, such as the Social Security Administration (SSA) and Office of Disability Employment Policy (ODEP), have begun to address the need to coordinate better adult employment services for young adults. The commenter suggested that the proposed RRTC could help to ensure that young adults are better served.

Discussion: An applicant has the discretion to propose the development and implementation of research and training activities focused on adult employment services for young adults. The peer review process will evaluate the merits of the approaches proposed in an application. NIDRR considers it unnecessary to require that all applicants under this priority address adult employment services for young adults.

Changes: None.

Comment: One commenter suggested that the priority require improved understanding of effective employer-based or workplace strategies or accommodations that improve employment outcomes. The commenter further suggested clarification of the intent of the priority to evidence a clear focus on job retention rather than job access.

Discussion: NIDRR believes that the priority should also require improved understanding of factors that influence effective employer-based or workplace strategies or accommodations that improve employment outcomes. NIDRR intends that the research activities of the RRTC will focus on workplace supports and job retention strategies rather than job access.

Changes: We have revised the language in the third bulleted paragraph of the priority to add language about factors influencing employer understanding and workplace strategies or accommodations.

Substance Abuse and Employment Outcomes Disability

Comment: Fourteen commenters noted that contributing risk factors to alcohol, tobacco, and other drug (ATOD) use include isolation, stigma, and physical pain. They suggested that the best use of the RRTC funds would be to focus on programs that examine these behaviors, their associated risk factors, and the evaluation of ATOD intervention and prevention programs for persons with disabilities.

Discussion: Applicants have the discretion to propose activities of the nature and scope described by the commenter within the context of the priority. The peer review process will evaluate the merits of the approaches proposed in an application.

Changes: None.

Comment: Seven commenters recommended that the priority specifically address the State Vocational Rehabilitation (VR) system, including State VR agencies and Centers for Independent Living, because of the large number of persons with disabilities who find employment through this system.

Discussion: NIDRR prefers to provide applicants the discretion to identify the employment service systems around which they elect to develop their research and training program. An applicant has the flexibility to specifically address the State VR system, including State VR agencies and Centers for Independent Living. The peer review process will evaluate the merits of the approaches proposed in an application.

Changes: None.

Comment: Four commenters expressed concern that the research did not address the long-term employment outcomes of persons with disabilities who have or have had substance abuse problems. These commenters suggested that such research is particularly important to facilitating the capacity of employment systems to formulate better rehabilitation plans, engage in inter-system networking to assist this population, and begin addressing the employment inequities, discrimination, and stigma for persons with disabilities and substance abuse problems.

Discussion: An applicant has the discretion to propose research activities as described by the commenter within the context of the priority. The peer review process will evaluate the merits of the approaches proposed in an application.

Changes: None.

Comment: Three commenters considered the definition of clinical treatment services to be vague. They suggested that NIDRR consider narrowing the definition to include specific programs or services, such as substance use disorder treatment programs.

Discussion: NIDRR prefers to allow applicants the flexibility to identify the clinical treatment programs or services on which their research will be focused. However, we are revising the language in the priority to identify substance use disorder treatment programs as an example of clinical treatment services that the RRTC may propose to examine.

Changes: We are revising the language in the priority to add substance use disorder treatment programs as an example of clinical treatment services.

Comment: Four commenters noted that the priority does not require investigation of the potential prevalence of substance abuse problems among various disability groups. It was suggested that NIDRR include this requirement given its critical role in planning for screening, assessment, and referral systems.

Discussion: NIDRR prefers to provide applicants the discretion to identify the target disability group(s) that its research will address. The priority as described will allow an applicant to propose research that investigates the prevalence of substance abuse programs among various disability groups. The peer review process will evaluate the merits of the approaches proposed in an application.

Changes: None.

Comment: Three commenters noted that the priority fails to address abuse of prescribed medication and its particular influence on employment outcomes for persons with disabilities.

Discussion: NIDDR believes that an applicant has the discretion to address the role of prescribed medication and its influence on employment outcomes within the context of the priority as described. The peer review process will evaluate the merits of the approaches proposed in an application.

Changes: None.

Comment: One commenter encouraged NIDRR to consider ways to identify and address traditionally underserved populations at particularly high risk of substance abuse and focus some effort on them. The commenter further suggested that applicants address access to service programs across different geographical areas, such as central city, suburban, and rural.

Discussion: NIDRR is committed to improving employment outcomes for all persons with disabilities, including traditionally underserved populations, and their access to service programs across different geographical areas, including central city, suburban, and rural. NIDRR believes that the priority as described allows an applicant the flexibility to address research and training activities that focus on specific populations, including underserved populations at particularly high risk of substance abuse, and their access to services across different geographical areas. The peer review process will evaluate the merits of the activities that an applicant proposes.

Changes: None.

[FR Doc. 04–11679 Filed 5–21–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Research and Training Centers (RRTC) Program—Improving Employment Outcomes

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2004.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–1.

Dates: Applications Available: May 24, 2004.

Deadline for Notice of Intent to Apply: June 24, 2004.

Deadline for Transmittal of Applications: July 23, 2004.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $2,800,000.

Estimated Range of Awards: $600,000–$700,000.

Estimated Average Size of Awards: $700,000.

Maximum Award: We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs with an indirect cost rate of 15 percent.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (Act), as amended. For FY 2004, the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this notice. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

Priorities: These priorities are from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2004 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

These priorities are:

Priority 1—Employment Policy and Individuals with Disabilities; Priority 2—Employment Service Systems; Priority 3—Workplace Supports and Job Retention; and Priority 4—Substance Abuse and Employment Outcomes.

General requirements for all RRTCs funded under one of these priorities and specific requirements for each priority are in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**. Applicants must select and focus research on one of these priorities. Applicants are allowed to submit more than one application as long as each application addresses only one priority.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97(b) the regulations for this program in 34 CFR part 350, and (c) the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,800,000.

Estimated Range of Awards: $600,000–$700,000.

Estimated Average Size of Awards: $700,000.

Maximum Award: We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs with an indirect cost rate of 15 percent.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133B–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: Due to the open nature of the RRTC competition, and to assist with the selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). While the submission is mandatory, the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application. We will notify only those potential applicants who have failed to submit an LOI that meets the requirements listed below.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, which priority will be addressed, the name of the company, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the

proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is a prerequisite for eligibility to submit an application.

NIDRR will accept a LOI via surface mail, e-mail, or facsimile by June 24, 2004. The LOI must be sent to: Surface mail: Roslyn Edson, U.S. Department of Education, 550 12th Street, SW., room 6029, Potomac Center Plaza, Washington, DC 20202; or fax (202) 205–8515; or e-mail: *roslyn.edson@ed.gov.*

If a LOI is submitted via e-mail or facsimile, the applicant must also provide NIDRR with the original signed LOI within seven days after the date the e-mail or facsimile is submitted.

For further information regarding the LOI requirement contact Rosyln Edson at (202) 245–7331. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: May 24, 2004.

Deadline for Notice of Intent to Apply: June 24, 2004.

Deadline for Transmittal of Applications: July 23, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Research and Training Centers Program—Improving Employment Outcomes competition—CFDA Number 84.133B–1 is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Research and Training Centers Program—Improving Employment Outcomes competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Rehabilitation Research and Training Centers Program—Improving Employment Outcomes competition and

you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Research and Training Centers Program—Improving Employment Outcomes competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in 34 CFR 75.210 of EDGAR and 34 CFR 350.54. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods or both are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and to contribute to changes and improvements in policy, practice, and outcomes for individuals with disabilities and their families;
- The percentage of grantees deemed to be implementing a systematic outcomes-oriented dissemination plan, with measurable performance goals and targets, that clearly identifies the types of products and services to be produced and the target audiences to be reached, and describes how dissemination products and strategies will be used to meet the needs of end-users, including individuals with disabilities and those from diverse backgrounds, and promotes the awareness and use of information and findings or both from NIDRR-funded projects;
- The percentage of consumer-oriented dissemination products and services (based on a subset of products and services nominated by grantees to be their ''best'' outputs) that are deemed to be of high-quality and contributing to advances in knowledge and to changes and improvements or both in policy, practices, services, and supports by individuals with disabilities and other end-users, including practitioners, service providers, and policy makers; and
- The percentage of new studies funded each year that assess the effectiveness of interventions or demonstration programs using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department of Education Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.*

Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.cessi.net/pr/grc/index.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 550 12th Street, SW., room 6046, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: May 18, 2004.

Troy R. Justesen,

Acting Deputy Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–11680 Filed 5–21–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
May 24, 2004

Part IV

Environmental Protection Agency

40 CFR Parts 191 and 194

Intent To Evaluate Whether the Waste Isolation Pilot Plant Continues To Comply With the Disposal Regulations and Compliance Criteria; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 191 and 194

[FRL –7666–9]

Intent To Evaluate Whether the Waste Isolation Pilot Plant Continues To Comply With the Disposal Regulations and Compliance Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) intends to evaluate and recertify whether or not the Waste Isolation Pilot Plant (WIPP) continues to comply with EPA's environmental radiation protection standards for the disposal of radioactive waste. Pursuant to the 1992 WIPP Land Withdrawal Act (LWA), as amended, the U.S. Department of Energy (''DOE'' or ''Department'') must submit to EPA documentation of continued compliance with EPA's standards for disposal and other statutory requirements no later than 5 years after the initial receipt of transuranic waste at the WIPP. EPA initially certified that the WIPP met applicable regulatory requirements on May 18, 1998 (63 FR 27354), and the first shipment of waste was received at the WIPP on March 26, 1999.

EPA will determine whether the WIPP will continue to comply with EPA's standards for disposal based on the Compliance Recertification Application (CRA) submitted by the Secretary of Energy. DOE's application was received by the EPA on March 26, 2004, and a copy may be found on EPA's WIPP Web site and in the public dockets (*see* the **SUPPLEMENTARY INFORMATION** & **FOR FURTHER INFORMATION CONTACT** sections). The Administrator will make a determination as to the completeness of the application in the near future (approximately 4–6 months) and will notify the Secretary, in writing, when the Agency deems the application ''complete.'' EPA will evaluate the ''complete'' application in determining whether the WIPP continues to comply with the radiation protection standards for disposal. The Agency requests public comment on all aspects of the DOE's application.

DATES: Comments in response to today's document and on DOE's compliance application must be received by the end of the comment period. The comment period will extend, at a minimum, beyond the time when EPA notifies DOE that the recertification application is complete. The ending date of the public comment period will be specified in a subsequent **Federal Register** document. Announcements will be published in the **Federal Register** to provide information on the Agency's completeness determination and final recertification decision.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0025. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sharon White, Office of Radiation and Indoor Air, (202) 343–9457. Also, visit our Web site at *http://www.epa/gov/radiation/wipp* or call EPA's toll-free WIPP Information Line, 1–800–331–WIPP.

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. OAR–2004–0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–B4, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, hours: vary by semester; and in Santa Fe at the New Mexico State Library, hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

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 docket facilities identified in Unit I.B. 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.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' Late comments may be considered if time permits.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–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 *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–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.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0025.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0025. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0025.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

II. Background

The Waste Isolation Pilot Plant (WIPP) was authorized in 1980, under section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub L. 96–164, 93 Stat. 1259, 1265), ''for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.'' The WIPP is a disposal system for transuranic (TRU) radioactive waste. Developed by DOE, the WIPP is located near Carlsbad in southeastern New Mexico. TRU waste is emplaced 2,150 feet underground in an ancient layer of salt that will eventually ''creep'' and encapsulate the waste containers. The WIPP has a total capacity of 6.2 million cubic feet of TRU waste.

The 1992 WIPP Land Withdrawal Act (LWA; Public Law 102–579) [1] limits radioactive waste disposal in the WIPP to TRU radioactive wastes generated by defense-related activities. TRU waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The Act further stipulates that radioactive waste shall not be TRU waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The TRU radioactive waste proposed for

[1] The 1992 WIPP Land Withdrawal Act was amended by the ''Waste Isolation Pilot Plant Land Withdrawal Act Amendments,'' which were part of the National Defense Authorization Act for Fiscal Year 1997.

disposal in the WIPP consists of materials such as rags, equipment, tools, protective gear, and sludges that have become contaminated during atomic energy defense activities. The radioactive component of TRU waste consists of man-made elements created during the process of nuclear fission, chiefly isotopes of plutonium. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901–6992k). The waste proposed for disposal at WIPP derives from Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

The WIPP must meet EPA's generic disposal standards at 40 CFR part 191, subparts B and C, for high-level and TRU radioactive waste. These standards limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. To determine whether the WIPP performs well enough to meet these disposal standards, EPA issued the WIPP Compliance Criteria (40 CFR part 194) in 1997. The Compliance Criteria interpret and implement the disposal standards specifically for the WIPP site. They describe what information DOE must provide and how EPA evaluates the WIPP's performance and provides ongoing independent oversight. Thus, EPA implemented its environmental radiation protection standards, 40 CFR part 191, by applying the WIPP Compliance Criteria, 40 CFR part 194, to the disposal of TRU radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to **Federal Register** notices published in 1985 (50 FR 38066–38089, September 19, 1985) and 1993 (58 FR 66398–66416, December 20, 1993). For more information about 40 CFR part 194, refer to **Federal Register** notices published in 1996 (61 FR 5224–5245, February 9, 1996) and 1995 (60 FR 5766–5791, January 30, 1995).

Using the process outlined in the WIPP Compliance Criteria, EPA determined on May 18, 1998 (63 FR 27354), that DOE had demonstrated that the WIPP complied with EPA's radioactive waste disposal regulations at subparts B and C of 40 CFR part 191. EPA's certification determination permitted the WIPP to begin accepting transuranic waste for disposal, provided that other applicable conditions and environmental regulations were met.

Since the 1998 certification decision, EPA has conducted ongoing independent technical review and inspections of all WIPP activities related to compliance with the EPA's disposal regulations. The initial certification decision identified the starting (baseline) conditions for the WIPP site and established the waste and facility characteristics necessary to ensure proper disposal in accordance with the regulations. At that time, EPA and DOE understood that future information and knowledge gained from the actual operations of the WIPP would result in changes to the best practices and procedures for the facility.

In recognition of this, section 8(f) of the amended WIPP LWA requires EPA to evaluate all changes in conditions or activities at WIPP every five years to determine if WIPP continues to comply with EPA's disposal regulations for the facility. This determination is not subject to standard rulemaking procedures or judicial review, as stated in the aforementioned section of the WIPP LWA. The first recertification process beginning now will include a review of all of the changes made at the WIPP facility since the original 1998 EPA certification.

Recertification is not a reconsideration of the decision to open WIPP, but a process to reaffirm that the WIPP meets all requirements of the disposal regulations. The recertification process will not be used to approve any new significant changes proposed by DOE; any such proposals will be addressed separately by EPA. Recertification will ensure that the WIPP is operated using the most accurate and up-to-date information available and provides documentation requiring DOE to operate to these standards.

EPA received DOE's Compliance Recertification Application (CRA) on March 26, 2004. The Agency will review DOE's recertification application to ensure that the WIPP will continue to safely contain TRU radioactive waste. If EPA approves the application, it will set the parameters for how WIPP will be operated by DOE over the following five years. This approved application will then serve as the baseline for the next recertification in 2009.

With today's notice, the Agency solicits public comment period on DOE's documentation of whether the WIPP facility continues to comply with the disposal regulations. A copy of the application is available for inspection on EPA's WIPP Web site *(http://www.epa.gov/radiation/wipp)* and in the public dockets described in the **SUPPLEMENTARY INFORMATION** section. Other background information documents related to the Agency's recertification activities also available in our public dockets. EPA will evaluate the complete application in determining whether the WIPP continues to comply with the radiation protection standards for disposal. In addition, EPA will consider public comment and other information relevant to WIPP's compliance. The Agency is most interested in public comment on any issues where changes have occurred that may potentially impact the WIPP's ability to remain in compliance with the requirements outlined in EPA's disposal regulations, as well as any areas where the public believes that changes have occurred and have not been identified by DOE.

The first step in the recertification process is a ''completeness'' determination. EPA will make this completeness determination in the near future as a preliminary step in its more extensive technical review of the application. This determination will be made using a number of the Agency's WIPP-specific guidances; most notably, the ''Compliance Application Guidance'' (CAG; EPA Pub. 402–R–95–014) and ''Guidance to the U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR parts 191 and 194'' (Docket A–98–49, Item II–B3–14; December 12, 2000). Both guidance documents include guidelines regarding: (1) Content of certification/recertification applications; (2) documentation and format requirements; (3) time frame and evaluation process; and (4) change reporting and modification. The Agency developed these guidance documents to assist DOE with the preparation of any compliance application for the WIPP. They are also intended to assist in EPA's review of any application for completeness and to enhance the readability and accessibility of the application for EPA and public scrutiny. It is EPA's intent that these guidance documents will give DOE and the public a general understanding of the information that is expected to be included in a complete application of compliance. The EPA may request additional information as necessary from DOE to ensure the completeness of the CRA.

Once the recertification application is deemed complete, EPA will provide DOE with written notification of its completeness determination and publish a **Federal Register** notice

announcing this determination as well. All correspondence between EPA and DOE regarding the completeness of the CRA will be placed in the public dockets.

EPA will make a final decision recertifying whether the WIPP facility continues to meet the disposal regulations after each of the aforementioned steps (technical analysis of the application, issuing a notice of the CRA's completeness in the **Federal Register**, and analyzing public comment) have been completed. As required by the WIPP LWA, EPA will make a final recertification decision within six months of issuing its completeness determination.

Dated: May 19, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–11765 Filed 5–21–04; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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S. 2315/P.L. 108–228

To amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering. (May 18, 2004; 118 Stat. 644)

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CFR CHECKLIST

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52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8]July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
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86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
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790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
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42 Parts:			
1–399	(869–050–00169–1)	60.00	Oct. 1, 2003
400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–050–00173–0)	62.00	Oct. 1, 2003
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–050–00180–2)	39.00	Oct. 1, 2003
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
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140–155	(869–050–00183–7)	25.00	Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–050–00189–6)	45.00	Oct. 1, 2003
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
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1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
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7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–050–00198–5)	57.00	Oct. 1, 2003
29–End	(869–050–00199–3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
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200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
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CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.